Supreme Court, U. S.
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In the Supreme Court of the United States

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,
Petitioners

v.

JOHN ADAMS,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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June, 1979

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PETITION

IN THE SUPREME COURT OF THE UNITED STATES

No.

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Julius T. Cuyler, and Milton Shapp, respectfully pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Third Circuit, entered in this proceeding on February 9, 1979.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, reversing the opinion of the United States District Court, is reported at 592 F.2d 720 (3d Cir. 1979). A copy of this opinion is printed in Appendix A hereto (App. 1a-3a).

The opinion of the United States District Court is reported at 441 F. Supp. 556 (E.D. Pa. 1977). A copy of this opinion is printed in Appendix B hereto (14a-19a).

JURISDICTION

The judgment of the United States Court of Appeals was entered on February 9, 1979. Petitioners' prayer for enlargement of time granted petitioners until June 9, 1979 to file a petition for a writ of certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), §2101(c).

QUESTION PRESENTED

Whether Article IV of the Interstate Agreement on Detainers requires that interstate transfers of inmates be accompanied by the same procedural safeguards afforded to inmates transferred pursuant to the Uniform Criminal Extradition Act.

STATUTES INVOLVED

The statute principally involved is the Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1438 (Purdon 1964), which is set forth in Appendix C. (App. 20a). Also involved is the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 (Purdon 1964 & Supp. 1978), which is set forth in Appendix D. (App. 32a).

STATEMENT

This action is brought pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, by an inmate whose interstate transfer was effectuated pursuant to Article IV of the Interstate Agreement on Detainers, Pa. Stat. Ann. Tit. 19, §§1431-1438[1] (hereinafter Detainer Act). In his complaint, the inmate challenged the constitutionality of the Detainer Act, contending that the failure of the Detainer Act to provide that the inmate be advised of his right to petition the governor for review of the custody request, as well as the absence of any pre-transfer hearing provisions constitute a violation of due process rights. Furthermore, the complaint alleged that the failure to apply the hearing requirements of the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31 (hereinafter Extradition Act), to transfers made pursuant to Article IV of the Detainer Act, deprived the inmate of the equal protection of the law. The United States District Court dismissed the complaint for failure to state a claim.

An appeal was taken, and the United States Court of Appeals for the Third Circuit found it unnecessary to reach the constitutional issues raised by appellant, but concluded on the basis of statutory construction that the procedural safeguards provided in the Extradition Act also apply to prisoners subject to interstate transfer pursuant to Article IV of the Detainer Act.

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[1] The Federal Government is also a party to the "Interstate Agreement on Detainers". Pub. Law 91-538, Dec. 9, 1970, 84 Stat. 1397, 18 U.S.C.A. App.

REASONS FOR GRANTING THE PETITION

The Third Circuit Has Rendered a Decision in Conflict With the Decision of Another Circuit

The Detainer Act, a compact among forty-seven states and the United States, provides the exclusive and uniform method for the disposition of detainers lodged against prisoners. *United States ex rel. Esola v. Groomes,* 520 F.2d 830 (3d Cir. 1975). The Court of Appeals for the Third Circuit has concluded as a matter of statutory construction that Section IV(d) of the Detainer Act reserves to the prisoner all rights granted him under the Extradition Act, the most significant being the right to a pre-transfer hearing before a court of record.

This holding is in conflict with the Fifth Circuit decision in *Atkinson v. Hanberry,* 589 F.2d 917 (5th Cir. 1979). In *Atkinson,* the plaintiff sought to expunge a detainer and enjoin a Detainer Act transfer from a federal prison in Georgia to a state prison in Ohio. The district court refused plaintiff relief and on appeal the inmate argued that Article IV of the Detainer Act and the Due Process Clause of the Fifth Amendment entitle him to a hearing prior to his transfer. After focusing on Article IV(d), the same provision of the statute relied upon by the Third Circuit to arrive at its decision, the Fifth Circuit in *Atkinson* concluded that an inmate does not have a statutory right to a pre-transfer hearing, nor, by implication, to any other Extradition Act procedures.

The Third Circuit Has Rendered a Decision in Conflict With the Decisions of the Highest Courts of Four States Which Have Reviewed This Matter

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The courts of six states have reviewed the pre-transfer rights of inmates who are to be transferred pursuant to the provisions of the Detainer Act. In four of these states, Pennsylvania, Minnesota, New Jersey, and Washington[2], the courts have held that the inmate is not entitled to a pre-transfer hearing on statutory or constitutional grounds. However, in the remaining two states, Wisconsin and Colorado[3], the courts held, on constitutional grounds, that a pre-transfer hearing is required for transfers under the Detainer Act.

By reading Extradition Act procedural requirements into Article IV(d) of the Detainer Act, the Third Circuit has, in fact, rendered Article IV of the Detainer Act meaningless. No useful purpose could be served where a prosecuting authority proceeds under Article IV(d) of the Detainer Act since all the requirements of the Extradition Act must be fulfilled as well. The Court's holding in the instant case therefore has the effect of rendering Article IV(d) of the Detainer Act redundant.

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[2] *Commonwealth ex rel. Coleman v. Cuyler,* —— Pa. Superior Ct. ——, 396 A.2d 394 (1978); *Wertheimer v. State,* 294 Minn. 293, 201 N.W. 2d 383 (1972); *State v. Thompson,* 133 N.J. Super. 180, 336 A.2d 11 (1975); *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409 (1975).

[3] *State ex rel. Garner v. Gray,* 55 Wis. 2d 574, 201 N.W. 2d 163 (1972), and in *Moen v. Wilson,* 189 Colo. 85, 536 P. 2d 1129 (1975), the Courts decided that an extradition type hearing was required on equal protection grounds.

CONCLUSION

The Detainer Act is a statute of national applicability, and consequently its interpretation has a significant impact on the administration of the American criminal justice system. The conflicting statutory interpretation of Article IV (d) offered by the Third Circuit and Fifth Circuit Courts undermines one of the goals of the nationwide compact of the states and the United States: the speedy and uniform application of a specific procedure to the interstate transfer of those prisoners against whom a detainer has been lodged.

Similarly, the state courts which have dealt with the issue are divided. The inevitable confusion caused by the differing interpretation of the same statute can be eliminated by a decision from this Court.

For these reasons, the Court should issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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June, 1979

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 78-1021

JOHN ADAMS, and all others similarly situated,
Appellants

v.

JULIUS T. CUYLER, Superintendent, State Correctional Institution, Graterford, Pennsylvania; THOMAS J. SHUSTED, Prosecutor, Camden County, New Jersey; BRENDAN D. BYRNE, Governor of New Jersey; MILTON SHAPP, Governor of Pennsylvania; JOHN DOE, and RICHARD DOE, Detectives, Camden County, New Jersey,
Appellees

Appeal From the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 77-2075)

Argued November 14, 1978
Before: Seitz, Chief Judge and Gibbons and Weis, Circuit Judges
(Opinion filed February 9, 1979)

James D. Crawford, Esq., James A. Shellenberger, Esq., M. Eileen Marquette, Esq., Schnader, Harrison, Segal & Lewis, 1719 Packard Building, Philadelphia, PA 19102, Attorneys for Appellants.

Jerry I. Drew, Esq., Asst. Attorney General, Maria Parisi Vickers, Esq., Asst. Attorney General, Michael von Moschzisker, Deputy Attorney General, Eastern Regional Director, Gerald Gornish, Esq., Attorney General, 206 State Office Bldg., Philadelphia, PA 19130, Attorneys for Appellees.

OPINION OF THE COURT

Weis, Circuit Judge

This class action challenges the constitutionality of the Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19, §§1431-1438 (Purdon 1964) (Agreement), and is brought by plaintiff Adams, an inmate of the State Correctional Institution at Graterford, Pennsylvania. After careful review, we find it unnecessary to decide the constitutional issues, but conclude on statutory grounds that procedural safeguards porvided in the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19, §§191.1-.31 (Purdon 1964 & Supp. 1978) (Extradition Act), also apply to prisoners subject to Article IV of the Detainer Agreement. We therefore will vacate the judgment of the district court dismissing plaintiff's complaint.

In May, 1977, New Jersey sent a request for temporary custody under the Agreement to the appropriate Pennsylvania authorities so that Adams could be brought to Camden, New Jersey for trial on charges of armed robbery and other offenses. He challenged the transfer

in the district court under the Civil Rights Act, 42 U.S.C. §§1981, 1983, seeking injunctive and declaratory relief, as well as damages. The pro se complaint alleged that plaintiff was not in New Jersey when the crime occurred and that an alibi witness had died in the interval created by the porsecutor's delay in lodging the detainer. Plaintiff contends that had he been given the procedural rights of the Extradition Act, the Pennsylvania courts would not have permitted his transfer. The district judge dismissed the complaint for failure to state a claim. *Adams v. Cuyler,* 441 F. Supp. 556 (E.D. Pa. 1977).

Adams received a copy of the request for temporary custody delineating the nature of the indictment lodged against him, but this notice did not contain a copy of the Agreement. Plaintiff contends that the failure to advise him of his right under Article IV of the Agreement to petition the governor for review of the custody request, as well as the absence of any pretransfer hearing provisions, constitute due process violations. He asserts, also, that the refusal of state authorities to apply the hearing requirement of the Extradition Act denies the afffected prisoners equal protection under the law.

I.

The Interstate Agreement on Detainers is a compact among 47 states and the United States.[1] *United States ex rel. Esola v. Groomes,* 520 F.2d 830 (3d Cir. 1975). It

[1] Article I, §10 of the Constitution commands that all interstate agreements or compacts have the approval of Congress. Authorization for the Interstate Agreement on Detainers may be found in 4 U.S.C. §112(a), which provides:

"The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooper-

was designed to end the many abuses of the detainer system, and to minimize disruption of the rehabilitative process by giving prisoners a means of insuring expeditious disposition of outstanding criminal charges. As discussed in *United States v. Mauro,* —— U.S. ——, 46 U.S.L.W. 4491 (U.S. May 23, 1978), the Agreement is an improvement, from both the prisoners' and states' viewpoints, over previous detainer arrangements.

Before embarking on an examination of the plaintiff's contention, we must determine if statutory construction will negate the need to confront the constitutional challenges. *Hagans v. Lavine,* 415 U.S. 528, 543 (1974). We turn, therefore, to a review of the pertinent parts of the Detainer Agreement.

Article III of the Agreement provides that a person serving a term of imprisonment is to be given notice of a detainer lodged against him by the authorities of another state and has the right to demand disposition of the underlying indictment or criminal complaint. If the prisoner requests that the pending case be processed, he is then transferred to the accusing state where trial must be had within 180 days. Article III (a). This article enables the prisoner to compel the prosecuting authorities in the accusing state to dispose of all pending charges. *See* Article III (d).

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ative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts."

In 1970, the United States Government, on behalf of itself and the District of Columbia, joined the compact. Pub. L. No. 91-538, §§1-8, 84 Stat. 1397 (1970).

Article IV is addressed to the prosecution and allows the authorities of the charging state to secure temporary custody of the prisoner so that he may be tried on outstanding indictments or complaints. Section (a) of that Article provides a simplified procedure for arranging transfer of the prisoner. The prosecutor, with the approval of the court that issued the indictments or complaint, serves a written notice upon the authorities of the asylum state. After a 30-day period when the governor of the asylum state may disapprove the request either upon his own motion or that of the prisoner, custody is granted to the accusing state. Article IV contains a speedy trial provision as well, which requires commencement of proceedings within 120 days after arrival in the accusing state. *See* Article IV (c).

Before adoption of the Agreement, the only method available to prosecutors to obtain custody of a person in another state was the extradition process. The procedure under the Extradition Act is more elaborate than that spelled out in the Interstate Detainer Agreement. In an extradition proceeding, the governor of the demanding state asks the governor of the asylum state to deliver the accused. The accused is then entitled to a hearing with the aid of counsel[2] before a judge of a court of record. There it must be shown that: the subject has been charged with the crime in the demanding state; the subject is a fugitive from that state; the subject was present in the de-

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[2] We have no occasion at this time to reconsider our earlier ruling that the state is not required to furnish counsel to indigent prisoners at extradition proceedings. See United States ex rel. Huntt v. Russell, 285 F. Supp. 765, 767 (E.D. Pa. 1968), aff'd per curiam, 406 F.2d 774 (3d Cir. 1969).

manding state at the time the crime was committed; the required papers are in order and the subject is in fact the person being charged. *Commonwealth ex rel. Marshall v. Gedney,* —— Pa. ——, ——, 386 A.2d 942, 945 (1978).

The petitioner here asserts that there has been a denial of equal protection because these procedural measures were not available to him before his transfer under the Detainer Agreement. He contends that since prisoners requested by a state not a party to the Agreement receive these statutory benefits, the Equal Protection Guarantee of the United States Constitution is offended. This argument has been accepted by some state appellate courts, see *Moen v. Wilson,* —— Colo. ——, 536 P.2d 1129 (1975); *State ex rel. Garner v. Gray,* 55 Wis. 2d 574, 201 N.W. 2d 163 (1972), and rejected by others, *Wertheimer v. State,* 294 Minn. 293, 201 N.W. 2d 383 (1972); *State v. Thompson,* 133 N.J. Super. 180, 336 A.2d 11 (1975); *Commonwealth ex rel. Coleman v. Cuyler,* —— Pa. Super. Ct. ——, —— A.2d —— (Dec. 22, 1978). Our reading of the Agreement obviates the need to answer Adams' contention.

In granting the prisoner the right to demand disposition of outstanding charges, Article III imposes a significant limitation in section (e):

> "Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein . . . and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for

> final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment . . . ."

The Extradition Act remained in effect after adoption of the Agreement, but when a prisoner chooses to claim the benefits of Article III, he must give up the procedural safeguards of the Extradition Act.

Article IV of the Agreement, which confers power on the out-of-state prosecutor to secure custody of an accused prisoner, contains no explicit provision with respect to extradition. There is, however, an oblique but pregnant reference in section (d) which reads:

> "Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery."

We construe section (d) as reserving to the prisoner the rights granted to him under the existing Extradition Acts, absent, of course, the specified exception. Our interpretation is consistent with that of the Council of State Governments, which approved the text of the Detainer Agreement at its 1956 conference. In its comments on the draft, the Council stated:

> "*Article IV(d)* safeguards certain of the prisoner's rights. Normally, the only way to get a

> prisoner from one jurisdiction to another for purposes of trial on an indictment, information or complaint is through resort to extradition or waiver thereof. If the prisoner waives, there is no problem. However, if he does not waive extradition, it is not appropriate to attempt to force him to give up the safeguards of the extradition process, even if this could be done constitutionally. Nevertheless, the right to insist on action by the governor is a right of state and not of the prisoner. Consequently, it is provided that the prisoner shall not be able to plead gubernatorial inactivity in resisting delivery to the other state. The situation contemplated by this portion of the agreement is different than that dealt with in Article III. That article relates to proceedings initiated at the request of the prisoner. Accordingly, in such instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights."

Council on State Government, Suggested State Legislation, Program for 1957, at 78-79 (1956). *See also* Meyer, *Effective Utilization of Criminal Detainer Procedures,* 61 Iowa L. Rev. 659 (1975).

The Council's comments are consistent with the extradition waiver requirements of Article III and explain the savings proviso of Article IV(d). Nowhere in the Agreement is there any indication that the procedural protections of the Extradition Act are abrogated by Article IV and there is no inconsistency between the two enact-

ments, other than the requirement of affirmative action by the asylum governor. Moreover, the fact that Article IV(d) does specifically refer to one minor procedural feature of the extradition process which is to be affected suggests forcefully that the other aspects, particularly those furnishing safeguards to the prisoner, are to continue in effect.[3]

We need not and do not decide whether the Detainer Act could constitutionally eliminate prisoners' rights under the Extradition Act. It is enough that the Agreement does not purport to do so. In a situation of this nature where a statute confers certain procedural rights, the enactment of legislation at a later date does not act as a repeal by implication in the absence of substantial inconsistency between the statutes or evidence of an intention to limit or abolish the rights. To hold otherwise would render Article IV(d) meaningless, in derogation of our duty "to give effect, if possible, to every clause and word of a statute." *Montclair v. Ramsdell,* 107 U.S. 147, 152 (1882).

Our determination is not at odds with this court's opinion in *United States ex rel. Esola v. Groomes, supra.* In *Esola,* we held that the Agreement was the sole means of effecting a transfer for purposes of trial between party states. Although that case was concerned with the transfer

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[3] Our research has uncovered only one federal case mentioning Article IV(d). In Thomas v. Levi, 422 F. Supp. 1027 (E.D. Pa. 1976), a federal prisoner against whom a detainer had been lodged asserted that Article IV(d) preserved her right under the Federal Extradition Act to require that a warrant be issued by the governor of the demanding state as a precondition to extradition. But because the court held that the federal act does not apply to prisoners transferred from federal to state custody, it had no reason to reach the Article IV(d) issue.

of a federal prisoner to a state jurisdiction, the holding is not altered when two states are involved. We continue to accept the *Esola* ruling as a necessary one for if the state authorities were to have the option of utilizing either the Extradition Act or the Detainer Agreement, the speedy trial provisions of the Agreement and its protection against the abuses of the detainer procedure could be thwarted.

Incorporating the prisoner's procedural rights under the Extradition Act is not inconsistent with *Esola* either philosophically or by its terms. The Agreement still forms the basis for the demand of the accusing state. The only substantial variation is that in carrying out the delivery of the prisoner, the hearing and notification rights of the extradition process will be implemented. To this extent, the two enactments are complementary rather than conflicting.

II.

After argument in this case, the Pennsylvania Superior Court filed its opinion in *Commonwealth ex rel. Coleman v. Cuyler, supra,* in which it rejected constitutional challenges to the Detainer Act, holding that the prisoner petitioner was not entitled to a hearing or notification of charges.[4] The court did not explore the statutory interpretation issue, but it was not urged by the petitioners, either there or in the case *sub judice*. Insofar as the Pennsylvania court discussed constitutional considerations and we rely upon statutory interpretation, the rationales are

[4] We find it difficult to understand why the Pennsylvania Attorney General's office did not advise us in either brief or oral argument of the pendency of the *Coleman* case.

not per se inconsistent. Since we reach a different conclusion, however, it is necessary to determine whether we are bound by the result reached in *Coleman*.[5]

Although a state's interpretation of its own statute is binding on the federal courts, a different result obtains when the legislation adopts an interstate compact. A compact is an agreement between two or more states and is the subject of a brief and negatively phrased authorization in the Constitution: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign power." Atricle I, §10. In a typical situation, an agreement is reached between two or more states, enacted by their respective legislatures, and sanctioned by Congress, often in broad, general terms. At times compacts receive congressional approval before state adoption. Thus, it may be said a compact is neither exclusively a state nor federal statute but an amalgam of both—in reality, a third category.

Over the years, compacts have engendered diverse problems, such as the question of jurisdiction in the district courts, *compare League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 507 F. 2d 517 (9th Cir. 1974), *cert. denied*, 420 U.S. 974 (1975) (finding federal ques-

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[5] We are aware that the Supreme Court of Pennsylvania has not yet passed on the question, but we do have a pronouncement of an intermediate appellate court which we may assume represents state law on the issue. Federal courts are not bound to, but may consider the pronouncements of state intermediate appellate courts as an indication of how the state's highest court would rule. *See* Commissioner v. Estate of Bosch, 387 U.S. 456, 465 (1967). *Cf.* National Surety v. Midland Bank, 551 F.2d 21, 29-31 (3d Cir. 1977). *See generally* C. Wright, Law of Federal Courts §58 (3d ed. 1976).

tion jurisdiction) *with Delaware River Joint Toll Bridge Commission v. Miller,* 147 F. Supp. 270 (E.D. Pa. 1956) (rejecting jurisdiction); certiorari jurisdiction in the Supreme Court, *Delaware River Joint Toll Bridge Commission v. Colburn,* 310 U.S. 419 (1940); and, pertinent here, whether state or federal court interpretation controls, *Petty v. Tennessee-Missouri Bridge Commission,* 359 U.S. 275 (1959). In *Petty,* the Court said flatly: "The construction of a compact sanctioned by Congress under Art. I, §10, cl. 3, of the Constitution presents a federal question." *Id.* at 278. There would seem to be little doubt, therefore, that federal interpretation of the Interstate Detainers Agreement must govern. Judge Garth, concurring in *United States ex rel. Esola v. Groomes, supra,* took that position, and although the majority was content to leave the question for another day, that day has now dawned.

The underlying theory of federal predominance in the interpretation of interstate compacts is that they become a "law of the Union" because of congressional sanction. *See Pennsylvania v. The Wheeling & Belmont Bridge Co.,* 54 U.S. (13 How.) 518, 566 (1851). Yet this rationale has been strongly criticized. For example, a compact may treat matters not assigned to Congress by the Constitution and a new and questionable area may be opened to federal over-sight. In some instances, moreover, because approval is given before the precise terms of the compact have been determined, Congress never actually passes upon the language of the enactment that is said to be a "law of the Union." *See* Engdahl, *Construction of Federal Compacts: A Questionable Federal Question,* 51 Va. L. Rev. 987, 1040-47 (1965).

However valid these objections might be, they are not present in this case. Article IV, §2 of the Constitution places extradition in the federal domain, and Congress has legislated in this area since 1793, when it passed the first Federal Extradition Act, Act of February 12, 1793, ch. VII, 1 Stat. 302 (1793) (current version at 18 U.S.C. §3182). And although it is true that the compact was sanctioned in advance in only general terms, the Detainer Agreement was later adopted by Congress, ipsissimis verbis, when it made the United States a party.[6] There is thus a strong federal interest here to provide a uniform interpretation of a cooperative federal-state venture.

Accordingly, we express no opinion on the constitutional reasoning advanced in *Coleman,* since it is not binding upon us. Our analysis of the statute persuades us that prisoners may be transferred under Article IV of the Agreement only after being given the opportunity for a hearing provided in the Extradition Act, Pa. Stat. Ann. tit. 19, 191.10 (Purdon 1964). Therefore, the judgment of the district court will be vacated and the case will be remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief applicable to members of the class.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

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[6] We are not here confronted with the issue whether jurisdiction under the federal question statute, 28 U.S.C. §1331 is present. Plaintiff asked for a declaratory judgment and declaratory relief under §§1981 and 1983, jurisdiction being asserted under 28 U.S.C. §1343.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2075

JOHN ADAMS

v.

JULIUS T. CUYLER and THOMAS J. SHUSTED and BRENDEN T. BYRNE and MILTON SHAPP and JOHN DOE and RICHARD ROE

MEMORANDUM OF DECISION

McGlynn, J.

This case is a civil rights action brought by the plaintiff, John Adams, for himself and all others similarly situated. Plaintiff is seeking damages, declaratory, and injunctive relief based on alleged constitutional violations occasioned by the transfer of prisoners from Pennsylvania to New Jersey pursuant to the Interstate agreement on Detainers, Pa. Stat. Ann. tit. 19, §1431 (Purdon 1964) (Detainer Agreement).

Plaintiff was, at the time this complaint was filed, incarcerated in the State Correctional Institute at Grater-

ford, Pennsylvania. He has since been remanded to the custody of the appropriate authorities of Camden County, New Jersey in response to their request for temporary custody made under Article IV of the Detainer Agreement.[1] Plaintiff claims that although he was given a copy of the request made by the New Jersey officials, he was never "informed of his constitutional rights" with respect thereto.

The complaint asserts that the Detainer Agreement as applied has two separate constitutional deficiencies which entitle the plaintiff to the requested relief. First, it is contended that the practice of not informing prisoners of their constitutional and statutory rights in connection with an interstate transfer violates the due process clause of the fourteenth amendment. Second, it is asserted that the fact that persons transferred interstate under the Detainer Agreement are not afforded the same procedural rights as persons transferred under the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19, §191.1-§191.31 (Purdon 1964) (Extradition Act), violates the equal protection clause of the fourteenth amendment. I find that both claims are without merit and, therefore, dismiss the complaint for failure to state a claim upon which relief can be granted.

The plaintiff's due process claim must be dismissed because, simply stated, the plaintiff has no constitutional or statutory rights of which he could be informed. It is well settled that there is no constitutional right to any procedure to challenge an extradition. *See e.g., Feilke v.*

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[1] Because of plaintiff's requests for damages and class representation, the fact that plaintiff has already been transferred does not make the action moot. *Danzy v. Johnson*, 417 F. Supp. 426 (E.D. Pa. 1976).

Governor of New Jersey, 414 F. Supp. 10 (E.D. Pa. 1976). The civil rights statutes do not provide a remedy for an individual who is involuntarily transferred interstate in violation of the extradition statutes. *Hines v. Guthery,* 342 F. Supp. 594 (W.D. Va. 1972); *Johnson v. Buie,* 312 F. Supp. 1349 (W.D. Mo. 1970). In fact, the Supreme Court has held that a criminal defendant's rights are not violated when the prosecuting state forcibly abducts the defendant from another judisdiction. *Frisbie v. Collins,* 342 U.S. 519 (1952); *Ker v. Illinois,* 119 U.S. 436 (1886). In *Frisbie,* the Court stated:

> [D]ue process is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

Frisbie v. Collins, supra at 522. Similarly, the plaintiff here cannot assert any constitutional right to any type of review prior to being transferred to the New Jersey authorities. *Cf. Meachum v. Fano,* 427 U.S. 215 (1976); *Montanye v. Haymes,* 427 U.S. 316 (1976). (Normally there is no due process required when prisoners are transferred intrastate).

In addition to asserting a constitutional right to review, the plaintiff contends that he has a statutory right to petition the Governor of Pennsylvania to block his transfer to New Jersey. It is claimed that the failure to inform prisoners of this alleged right is an unconstitutional denial of due process. I need not decide that issue,

however, since I have concluded that while the Governor has the power to deny another state's request for custody of a Pennsylvania prisoner, the prisoner has no "right" to have his case reviewed by the Governor. The plaintiff, apparently seeks to harvest a right from the following language of the Detainer Agreement:

> [T]here shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

Pa. Stat. Ann. tit. 19 §1431, Art. IV(a). I do not believe, however, that because the governor has the power to act on a prisoner's request, the prisoner has a constitutional right to be specifically advised of his ability to move the Governor to disapprove the request for temporary custody. *Cf. United States v. Rothman,* 492 F.2d 1260 (9th Cir. 1973); *United States v. Horton,* 488 F.2d 374 (5th Cir. 1973) (There is no requirement that a defendant be apprised of his right to refuse permission to search in order to give a valid consent).

The plaintiff's equal protection claim is without merit because there is a rational basis for treating prisoners sought by other states in a different manner than persons who are at large in the state in which they are found. There need only be a rational basis for the disparate treatment in order that the classification survive judicial scrutiny. *McGinnis v. Royster,* 410 U.S. 263 (1972); *James v. Strange,* 407 U.S. 128 (1972); *Schilb v. Kuebel,* 404 U.S. 357 (1970); *Dandridge v. Williams,* 397 U.S. 471 (1970).

The rational basis in the present classification is evident once the purpose of providing a hearing prior to a transfer under the Extradition Act is understood. In *Johnson v. Buie, supra,* the court, in describing that purpose, stated:

> The theory behind permitting the fugitive to petition for habeas corpus in the asylum state is that it is a method of challenging the legality of his detention there. Once the accused has been brought within the custody of the demanding state, the legality of the extradition is no longer a proper subject of any legal attack by him.

312 F. Supp. at 1351. The plaintiff in this case is not challenging the legality of his incarceration in Pennsylvania, and, therefore, there is no reason to allow him the process available under the Extradition Act. Thus, not only is there a rational basis for *not* proceeding under the Extradition Act when transferring inmates interstate, there would be no rational basis for not utilizing the expeditious procedure under the Detainer Agreement.

In conclusion, I find no constitutional deficiencies in the Interstate Agreement on Detainers either on its face or as applied and consequently dismiss the complaint for failure to state a claim upon which relief can be granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2075

JOHN ADAMS

v.

JULIUS T. CUYLER and THOMAS J. SHUSTED and BRENDEN T. BYRNE and MILTON SHAPP and JOHN DOE and RICHARD ROE

ORDER

AND NOW, this 21st day of OCTOBER, 1977, it is hereby

ORDERED that the complaint in the above-captioned case be DISMISSED for failure to state a claim upon which relief can be granted.

BY THE COURT:
(s) Joseph L. McGlynn, Jr.
Joseph L. McGlynn, Jr., *J.*

APPENDIX C

CRIMINAL PROCEDURE
CHAPTER 18—DETAINERS

Sec.

1431. Agreement and procedure.
1432. Appropriate court.
1433. Enforcement and cooperation.
1434. Second and subsequent offenses.
1435. Escape.
1436. Duty of warden or other official.
1437. Administrator and information agent.
1438. Copies of act.

Library References

Prisons 14; C.J.S. Prisons §20.

§1431. Agreement and procedure

The Agreement on Detainers is hereby enacted into law and entered into by this Commonwealth with all other jurisdictions legally joining therein in the form sugstantially as follows:

Agreement on Detainers

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III. hereof or at the time that a request for custody or availability is initiated pursuant to article IV. hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III. or article IV. hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall prompt-

ly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph, shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If the trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or, effect and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final

disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V. (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the

officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V. (c) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III. or article IV. hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III. of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article

III. or article IV. hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order, dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in

the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being held[1] shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in article III. and IV. of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

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[1] Enrolled bill reads "had".

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officer of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

This agreement shall be liberally construed so as to effectuate its purpose. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and ef-

fect as to the state affected as to all severable matters 1959, Sept. 8, P.L. 829, No. 324, §1.

§1432. Appropriate court

The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this Commonwealth, mean any criminal court or any court having jurisdiction over indictable offenses. 1959, Sept. 8, P.L. 829, No. 324, §2.

§1433. Enforcement and cooperation

All courts, departments, agencies, officers and employes of this Commonwealth and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. 1959, Sept. 8, P.L. 829, No. 324, §3.

§1434. Second and subsequent offenses

Nothing in this act or in the Agreement on Detainers shall be construed to require the application of section 1108 of the act of June 24, 1939 (P.L. 872),[1] to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement. 1959, Sept. 8, P.L. 829, 324, §4.

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[1] Section 5108 of Title 18, Crimes and Offenses.

§1435. Escape

Escape from custody while in another state pursuant to the Agreement on Detainers, shall constitute an offense against the laws of this Commonwealth to the same ex-

tent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the Agreement on Detainers, and shall be punishable in the same manner as an escape from said institution. 1959, Sept. 8, P.L. 829, No. 324, §5.

§1436. Duty of warden or other official

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this Commonwealth to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers. 1959, Sept. 8, P.L. 829, No. 324, §6.

§1437. Administrator and information agent

The Commissioner of the Bureau of Correction will serve as central administrator of and information agent for the Agreement on Detainers. 1959, Sept. 8, P.L. 829, No. 324, §7.

§1438. Copies of act

Copies of this act shall, upon its approval, be transmitted to the Governor of each state, the Attorney General and the Secretary of State of the United States, and The Council of State Governments. 1959, Sept. 8, P.L. 829, No. 324, §8.

APPENDIX D

UNIFORM CRIMINAL EXTRADITION ACT

Library references: Extradition 21 et seq.: C. J. S. Extradition §§1, 2 et seq.: P. L. E. Extradition §1 et seq.

§191.1 Definitions

Where appearing in this act the term "Governor" includes any person performing the functions of governor by authority of the law of this State. The term "executive authority" includes the Governor and any person performing the functions of governor in a state other than this State. The term "state", referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. 1941, July 8, P.L. 288, §1.

§191.2 Fugitives from justice; duty of governor

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. 1941, July 8, P.L. 288, §2.

§191.3 Form of demand

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing, alleging, except in cases arising under section 6,[1] that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. 1941, July 8, P.L. 288, §3.

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[1] Section 101.0 of this title.

§191.4 Governor may investigate case

When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in

investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered. 1941, July 8, P.L. 288, §4.

§191.5 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged, in the manner provided in section 23 of this act,[1] with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. 1941, July 8, P.L. 288, §5.

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[1] Section 191.23 of this title.

§191.6 Extradition of persons not present in demanding state at time of commission of crime

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State charged in such other state in the

manner provided in section 3 [1] with committing an act in this State or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom. 1941, July 8, P.L. 288, §6.

[1] Section 191.3 of this title.

§191.7 Issue of governor's warrant of arrest; its recitals

If the Governor decides that the demand should be complied with he shall sign a warrant of arrest which shall be sealed with the State seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. 1941, July 8, P.L. 288, §7.

§191.8 Manner and place of execution

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state. 1941, July 8, P.L. 288, §8.

§191.9 Authority of arresting officer

Every such peace officer or other person empowered to make the arrest shall have the same authority in arrest-

ing the accused to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. 1941, July 8, P.L. 288, §9.

§191.10 Rights of accused person; application for writ of habeas corpus

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the said agent of the demanding state. 1941, July 8, P.L. 288, §10.

§191.11 Penalty for noncompliance with preceding section

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last section shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than $1,000.00, or be im-

prisoned not more than six months, or both. 1941, July 8, P.L. 288, §11.

§191.12 Confinement in jail; when necessary

The officer or persons executing the Governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city or borough, through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. 1941, July 8, P.L. 288, §12.

§191.13 Arrest prior to requisition

Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state, and, except in cases arising under section 6,[1] with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6,[1] has fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein wherever he may be found in this State and to bring him before the same or any other judge, magistrate or court who or which may be available in, or convenient of, access to the place where the arrest may be made to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. 1941, July 8, P.L. 288, §13.

§191.14 Arrest without a warrant

The arrest of a person may be lawfully made by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged

in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section,[1] and thereafter his answer shall be heard as if he had been arrested on a warrant. 1941, July 8, P.L. 288, §14.

§191.15 Commitment to await requisition; bail

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 6,[1] that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in the next section,[2] or until he shall be legally discharged. 1941, July 8, P.L. 288, §15.

§191.16 Bail in what cases; conditions of bond

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond and for his surrender to be arrested upon the warrant of the Governor of this State. 1941, July 8, P.L. 288, §16.

§191.17 Extension of time of commitment; adjournment

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period, not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 16,[1] but within a period not to exceed sixty days after the date of such new bond. 1941, July 8, P.L. 288, §17.

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[1] Section 101.10 of this title.

§191.18 Forfeiture of bail

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings[1] within this State. 1941, July 8, P.L. 288, §18.

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[1] Enrolled bills reads "preedings."

Library references: P.L.E. Bail §16; Extradition §1.

Historical Note

Uniform Law:

This section is similar to the provisions of section 18 of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.19 Persons under criminal prosecution in this state at time of requisition

If a criminal prosecution has been instituted against such person under the laws of this State and is still pend-

ing, the Governor in his discretion either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. 1941, July 8, P.L. 288, §19.

§191.20 Guilt or innocence of accused; when inquired into

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. 1941, July 8, P.L. 288, §20.

§191.21 Governor may recall warrant or issue alias

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. 1941, July 8, P.L. 288, §21.

§191.22 Fugitives from this state; duty of governor

Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State to some agent commanding him to receive the

person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. 1941, July 8, P.L. 288, §22.

§191.23 Application for issuance of requisition; by whom made; contents

I. When the return to this State of a person charged with crime in this State is required the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial, and that the proceeding is not instituted to enforce a private claim.

II. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board or the warden of the institution or sheriff of the county from which escape was made shall present to the Governor a written application for a requisition for the return of such person in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be,

including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information, and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the Governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence, shall be filed in the office of the Secretary of the Commonwealth to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. 1941, July 8, P.L. 288, §23.

§191.24 Costs and expenses

All costs and expenses shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. 1941, July 8, P.L. 288, §24.

§191.25 Immunity from service of process in certain civil actions

A person brought into this State by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings, to answer which he is being or has been returned, until

he has been convicted in the criminal proceeding or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradicted. 1941, July 8, P.L. 288, §25.

§191.26 Written waiver of extradition proceedings

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in section 7 and 8[1] and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus, as provided in section 10.[2]

If and when such consent has been duly executed it shall forthwith be forwarded to the Office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the pow-

ers, rights or duties of the officers of the demanding state or of this State. 1941, July 8, P.L. 288, §26.

§191.27 Non-waiver by this state

Nothing in this act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State or of its right, power or privilege to regain custody of such person by extradition proceedings, or otherwise, for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this act which result in or fail to result in extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. 1941, July 8, P.L. 288, §27.

Historical Note

Uniform Law:

This section is similar to the provisions of section 25-B of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.28 No right of asylum; no immunity from other Criminal prosecutions while in this state

After a person has been brought back to this State by or after waiver of extradition proceedings he may be tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition. 1941, July 8, P.L. 288, §28.

§191.29 Interpretation

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make

uniform the law of those states which enact it. 1941, July 8, P.L. 288, §29.

Historical Note

Uniform Law:

This section is similar to the provisions of section 27 of the Uniform Criminal Extradition Act, see Uniform Laws Annotated, volume 9.

§191.30 Constitutionality

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. 1941, July 8, P.L. 288, §30.

§191.31 Short title

This act may be cited as the Uniform Criminal Extradition Act. 1941, July 8, P.L. 288, §32.

Supreme Court, U. S.
FILED
MAR 28 1980
ROBERT, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,
Petitioners

v.

JOHN ADAMS
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition for Certiorari Filed June 9, 1979
Certiorari Granted February 19, 1980

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Opinion of the United States Court of Appeals for the Third Circuit (See Appendix A in the Petition for Writ of Certiorari, p. 1a)	

DOCKET ENTRIES—UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Dist. Office: 313/2

Docket: Yr. '77; Number 2075.

Filing Date: Mo. 06, Day 14, Year '77.

J 3; N/S 550

Judge Number: JM 1336

Plaintiffs

ADAMS, JOHN and all others similarly situated

vs.

Defendants

CUYLER, JULIUS T., Superintendent, State Correctional Institution; SUSTED, THOMAS J., individually and in his official capacity as Prosecutor of Camden County; BYRNE, BREDEN D., individually and in his official capacity of Governor of the State of New Jersey; SHAPP, MILTON, individually and in his official capacity of Governor of the Commonwealth of Pennsylvania; DOE, JOHN, individually and in his official capacity as Detective of Camden County; ROE, RICHARD, individually in his official capacity as Detective of Camden County

Cause: Civil Rights

Attorneys

For Plff: P.P. No. F-6598, P. O. Box 244, Graterford, Pa. 19426

For Deft: (4) Maria P. Vickers, Asst. Att'y Gen. Robert P. Kane, Attorney General, 206 State Office Bldg., Phila., Pa. 19130, *For: Shapp and Cuyler.*

(10) James D. Crawford, Esquire, 1719 Packard Bldg., Phila., Pa. 19102.

Date Nr. Proceedings

1977

Jun 14, Relator's motion for leave to proceed in forma pauperis and affidavit in support thereof, filed.

Jun 14 Plff's memorandum of law and affidavit in support of plff's request for a temporary restraining Order, filed.

Jun 14 Referred to Hon. Jos. McGlynn, J.

Jun 22 ORDER dated 6/21/77 that leave to proceed in forma pauperis is GRANTED, that the complaint be docketed and copies served on the defts' without prepayment of costs, and that upon the receipt of a copy of the complaint, the defts' are directed to file answers or otherwise plead within 20 days, filed. JM

6/23/77 entered & copies mailed.

Jun 22 Complaint, filed.

Jun 22 SUMMONS EXIT.

Sep 15 Summons returned, "on 8/24/77 served Office of the Governer of New Jersey, on 8/25/77 served Cuyler, on 8/29/77 served Thomas Shusted, as to the defts' John Doe, Richard Roe-unable to locate & on 8/29/77 served Shapp", filed.

Sep 15 ANSWER of defts' Shapp and Cuyler to plff's complaint, filed CASE LISTED FOR TRIAL.

Oct 26 MEMORANDUM & ORDER, McGlynn, J., that the complaint is "DISMISSED" for failure to state a claim upon which relief can be granted, filed. JM

10/27/77 entered & copies mailed.

Nov 16 Plff's petition for leave to appeal in forma pauperis and appointment of counsel, memorandum of law, affidavit in support of motion & memorandum, filed (notice of appeal attached).

Dec 9 ORDER dated 12/8/77 that plff. petition for leave to appeal in forma pauperis is GRANTED, filed. JM

12/12/77 entered & copies mailed.

Dec 9 Plff's notice of appeal received on 11/16/77 at 11:20 A.M., filed.

12/12/77 copies to: Vickers, U.S.C.A.

Dec 9 Copy of clerk's notice to U.S.C.A., filed.

Dec 29 Original record transmitted to U.S.C.A. (78-1021).

1978

Feb. 24 Certified copy ORDER, U.S. Court Appeals granting motion for appointment of counsel, etc., filed.

Feb. 24 Certified copy of ORDER, U.S. Court Appeals, appointing James D. Crawford, Esquire as counsel and setting briefing schedule, filed.

1979

Mar 5 Certified copy of Order U.S.C.A. that the judgment of the District Court filed 10/26/77 is vacated & the cause remanded for further proceedings consistent with the opinion of this court, filed.

Mar 5 Record on appeal returned.

Sep 20 Letter to Judge McGlynn from Maria Parisi Vickers, Deputy Attorney General re: request to stay proceedings pending decision in the U.S. Supreme Court, with Order approving same, filed.

GENERAL DOCKET
United States Court of Appeals
For the Third Circuit

Appeal from Eastern District of Pennsylvania
Adams
Case No. 78-1021
Title of Case

ADAMS, JOHN and all others similarly situated,
Appellants

vs.

CUYLER, JULIUS T., Superintendent, State Correctional Institution; SHUSTED, THOMAS J., individually and in his official capacity as Prosecutor of Camden County; BYRNE, BRENDAN T., individually and his official capacity as Governor of the State of New Jersey; SHAPP, MILTON, individually and in his official capacity as Governor of the Commonwealth of Pennsylvania; DOE, JOHN, individually and in his official capacity as Detective of Camden County; ROE, RICHARD, individually and in his official capacity as Detective of Camden County

---

Attorneys for Appellant
Pro Se
James D. Crawford
Schnader, Harrison, Segal & Lewis
(Ct. Apptd.—Civil)

Attorneys for Appellee
Maria Parisi Vickers [Julius Cuyler]
William T. DiCiurcio (Shusted)
592 F.2d 720

No. Below: D. C. Civil No. 77-2075

Judge Below: Joseph L. McGlynn, Jr.

Date of Judgment:

Notice of Appeal filed: December 9, 1977

Commenced in D. C. June 14, 1977

Date	Account of Appellant
1978	
Jan. 6	Forma Pauperis in D. C.

Date	Filings—Proceedings	Filed
1978		
Jan. 6	[Forma Pauperis in D. C.—see copy of order dated December 8, 1977 (Joseph L. McGlynn, Jr., U.S.-D.J.) granting John Adams, appellant, leave to proceed in forma pauperis].	
	Copy of Notice of Appeal, received December 13, 1977, filed.	
	Record, received December 29, 1977, filed.	
	Motion by appellant, John Adams, for appointment of counsel, received December 21, 1977, filed. (7cc)	
	Proof of Service of appellant's motion for appointment of counsel, received December 30, 1977, filed.	
	Motion by appellant, John Adams, for temporary restraining order (which the court may wish to treat as a motion for injunctive relief pending appeal), received January 5, 1978, filed. (5cc) Service made by Office of S.S.A. 1/10/78	
Feb. 6	Appearance of Maria Parisi Vickers, Esq. for appellee, Julius Cuyler, filed.	

Feb. 13 Submitted on: (1) Appellant's motion for appointment of counsel; and (2) Order to show cause and temporary restraining order (which the Court may wish to consider as a motion for injunction pending appeal). Coram: Gibbons and Hunter, C.J.

Feb. 23 Order (*Gibbons* and Hunter, C.J.) granting appellant's petition for the appointment of counsel; directing the Clerk to arrange for such appointment; and denying the motion for an injunction pending appeal filed.

Feb. 23 Certified copy of above order to C. of D. C.

Feb. 23 Order *(Clerk)* appointing James D. Crawford, Esq., 1719 Packard Building, Phila., Pa. 19102, as counsel to represent appellants, which appeal, without compensation, is from the order of the District Court, dated October 26, 1977, which order dismissed appellants' complaint for failure to state a claim upon which relief can be granted in this civil rights case; and directing that the parties abide by the following briefing schedule: (1) Appellants' original and 3 legible copies of brief and the appendix to be filed and served within 40 days of the date of this order; and (2) appellees' brief to be filed and served within 30 days of the filing and service of appellants' brief and the appendix, filed.

Feb. 27 Appearance of James D. Crawford, Esq.; Schnader, Harrison, Segal & Lewis for appellants, filed.

Mar. 30 Consent motion by appellants for leave to extend time for filing brief and appendix to May 15, 1978, filed. (4 cc.). Certificate of service attached.

Mar. 31 Above consent motion granted. *Clerk.*

May 15 Consent motion by appellants for leave to extend time for filing brief and appendix to May 22, 1978, filed. (4 cc.). Certificate of service attached.

May 22 Above consent motion granted. *Clerk.*

May 22 Brief for appellants and appendix, filed. (25 cc.). Certificate of service by mail on May 22, 1978 appears on Page 28.

Jun. 16 Consent motion by appellees', Milton Shapp and Julius T. Cuyler, for leave to extend time to file brief to July 15, 1978, filed. (4 cc.) Service attached.

Jun. 23 Above consent motion granted. *Clerk.*

July 17 Brief for appellees, filed. (25 cc.). Service by mail on 7/17/78 attached.

Aug. 7 Letter dated August 4, 1978 from James D. Crawford, Esq., counsel for appellants, requesting oral argument, received.

Oct. 13 Appearance of William T. DiCiurcio, Esq., for appellee, Thomas J. Shusted, filed.

Nov. 3 Order dated November 1, 1978 (Gibbons, C.J.) directing 15 minutes argument time for each side, filed.

Nov. 14 Argued. Coram: Seitz, Ch. J., Gibbons and Weis, C.J.

Nov. 14 Copy of Memorandum and Order dated June 21, 1978 in the United States District Court, District of Massachusetts, received from counsel during oral argument. (4 cc.).

Nov. 16 Letter dated November 15, 1978 from Jerry I. Drew, Esq., counsel for appellee, rec'd for the information of the Court.

1979

Feb. 9 Opinion of the Court (Seitz, Ch.J., Gibbons and *Weis,* C.J.), filed.

Feb. 9 Judgment vacating the judgment of the District Court, filed October 26, 1977 and remanding the cause for further proceedings consistent with the opinion of this Court, filed.

Mar. 5 Certified judgment in lieu of formal mandate issued.

Mar. 5 Record returned to Clerk of D.C.

Mar. 7 Receipt for record from Clerk of D.C., filed.

Apr. 30 Copy of letter dated April 27, 1979 to counsel for appellee, advising that Supreme Court extended time for filing petition for writ of certiorari to and including June 9, 1979, rec'd from Clerk of Supreme Court.

June 14 Notice of filing on June 9, 1979 of petition for writ of certiorari, rec'd. from Clerk of Supreme Court, filed. (S. C. No. 78-1841).

1980

Feb. 25 Certified copy of order dated February 19, 1980 granting petition for writ of certiorari, rec'd from Clerk of the S. C., filed. (S. C. No. 78-1841).

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Civil Action File No. 77-2075

JOHN ADAMS, and all others similarly situated
Plaintiff

v.

CUYLER, JULIUS, T., Superintendent, State Correctional Institution, SUSTED, THOMAS J., individually and in his official capacity as Prosecutor of Camden County, BYRNE, BREDEN D., individually and in his official capacity of Governor of the State of New Jersey, SHAPP, MILTON, individually and in his official capacity of Governor of the Commonwealth of Pennsylvania, DOE, JOHN, individually and in his official capacity as Detective of Camden County, ROE, RICHARD, individually in his official capacity as Detective of Camden County
Defendant

SUMMONS
FORMA PAUPERIS

To the above named Defendant:

You are hereby summoned and required to serve upon plaintiff's attorney, whose address P.P., No. F-6598, P. O. Box 244, Graterford, Pa., 19426, an answer to the

complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John J. Harding
Clerk of Court.
Elizabeth M. Johnson
Deputy Clerk.

[Seal of Court]

Date: 6/22/77

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

Civil Action No. 77-2075

John Adams,

Plaintiff

And all others similarly situated

vs.

Julius T. Cuyler, Superintendent, State Correctional Institution, Graterford, Pennsylvania

And

Thomas J. Susted, Individually and in his official capacity as Prosecutor of Camden County, Courthouse, Camden, New Jersey

And

Breden D. Byrne, Individually and in his official capacity as Governor of the State of New Jersey

And

Milton Shapp, Individually and in his official capacity as Governor of the Commonwealth of Pennsylvania

And

John Doe, Individually and in his official capacity as Detective of Camden County, Courthouse, Camden, New Jersey

And

Richard Roe, Individually and in his official capacity as Detective of Camden County, Courthouse, Camden, New Jersey,

Defendants

JURISDICTION

---

1. This is a civil action, authorized by 42 U.S.C. §§1981 and 1983, to redress the deprivation, under color of State law, of rights secured by the Constitution of the United States. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §§1332 and 1343. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§2201 and 2202.

PLAINTIFFS

2. Plaintiff John Adams is a citizen of the United States, the Commonwealth of Pennsylvania and is currently an inmate at the State Correctional Institution at Graterford, Pennsylvania.

3. Plaintiff John Adams brings this action on behalf of himself, and all others similarly situated; seeking class action maintenance pursuant to Rule 23 (a), Federal Rules of Civil Procedure, on the ground that the Interstate Agreement on Detainers, 19 P.S. §§1431 et seq., (as will appear *infra*), is unconstitutional as applied to himself and the unnamed members of his class.

4. During all of the times referred to hereinafter, all plaintiffs were citizens of the United States, the Commonwealth of Pennsylvania, and inmates of Pennsylvania prisons.

DEFENDANTS

5. During all of the times referred to hereinafter, Defendant Julius T. Cuyler was the Superintendent of the State Correctional Institution at Graterford, Pennsylvania. He is legally responsible for the overall operation of the State Correctional Institution at Graterford, Pennsylvania, and for the welfare of all the inmates of that prison.

6. During all of the times referred to hereinafter, Defendant Thomas J. Susted is the Prosecutor of Camden County, Camden, New Jersey. He is legally responsible for the prosecution of criminal cases in Camden County, Camden, New Jersey.

7. During all of the times referred to hereinafter, Defendant Brenden D. Byrne was elected by the people of the State of New Jersey as Governor of the State of New Jersey. He is legally responsible for the State of New Jersey being a signatory state and party to the Interstate Agreement on Detainers. See; N.J.S.A. 2A: 159A-1 to 2A: 159A-15.

8. During all of the times referred to hereinafter, Defendant Milton Shapp is the legally elected Governor of the Commonwealth of Pennsylvania. He is legally responsible for the said Commonwealth of Pennsylvania being a signatory party to the said Interstate Agreement on Detainers.

9. During all of the times referred to hereinafter, Defendants John Doe and Richard Roe are employed as Detectives for Camden County, Camden, New Jersey. Based on information and belief, Defendants Doe and Roe are the authorized agents and servants of Defendant Susted, and are legally responsible for the interstate transfer of plaintiffs pursuant to the Interstate Agreement.

10. For the reasons set forth in paragraphs 11 to 15, *infra,* the Interstate Agreement on Detainers, 19 P.S. §§1431 et seq. is unconstitutional as applied to plaintiffs in that it denies them the due process and equal protection of the law guaranteed them by the Fourteenth Amendment to the United States Constitution.

11. On May 3, 1977, a Request for Temporary Custody of Plaintiff Adams was lodged by the Camden County Prosecutor's Office with Defendant Cuyler. Pursuant to the provisions of the Interstate Agreement on Detainers, 19 P.S. §§1431 et seq. ("Agreement"), Plaintiff Adams was provided with a copy of this Request, but was not informed of any of his constitutional rights.

12. Article IV, Section (a) of the Agreement provides that a prisoner against whom a detainer has been lodged may petition the Governor of Pennsylvania to disapprove of the request. Yet there is nothing in the Act mandating the superintendent of the institution where the prisoner whose custody is so requested to inform the detainee of his right to seek relief from the Governor, and this failure constitutes a denial of his right to due process.

13. Unlike the Uniform Extradition Act, 19 P.S. 191.1 et seq., the said Agreement does not provide for the imprisoned detainee to contest his extradition in a court of record in Pennsylvania before being delivered over to the authorities of the foreign state. This denial of those procedural rights which are afforded to individuals who, at the election of the foreign state are extradited under the aforementioned Uniform Extradition Act, 19 P.S. §§191.1 et seq., violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

14. Plaintiff Adams was not notified of any of the procedural rights accorded by either the Uniform Extradition Act or the Interstate Agreement on Detainers, in consequence of which he was denied his right to due process.

15. Based on information and belief, it is the practice of Defendant Cuyler, the Superintendents of all other State Correctional Institutions and Wardens of all prisons within the Commonwealth of Pennsylvania, to deliberately fail to inform any and all inmates or prisoners under their care and/or custody of the aforementioned procedural rights. It is their further practice to proceed under the Interstate Agreement on Detainers Act and to ignore the rights of the Uniform Extradition Act. By agreeing to proceed in this manner, Defendants Cuyler and Shusted conspired to deprive Plaintiff Adams of his civil rights.

16. Based on information and belief, all of the aforementioned Superintendents and Wardens of Pennsylvania prisons agree with the authorities of foreign states to proceed under the said Agreement, rather than afford those prisoners in their custody the procedural rights provided by the Uniform Criminal Extradition Act.

17. Plaintiff John Adams has been in the custody of Pennsylvania authorities, continuously, since February 6, 1976. Prior to that date, he was initially arrested by Pennsylvania law enforcement agents on June 20, 1975, and remained in custody until his escape on December 4, 1975. He remained at large until February 6, 1976, (a period of sixty-four days), when he was recaptured.

18. Although the Records Officer, at the State Correctional Institution at Graterford, Pennsylvania, ("S.C.

I.G."), recently informed him that the New Jersey authorities stated that they were unaware of Plaintiff Adams' whereabouts from July 2, 1974, until shortly before they lodged the aforesaid Request for Temporary Custody, the transcript of his Preliminary Arraignment on the criminal charges against him in Pennsylvania, on June 21, 1975, and the transcribed Notes of Testimony of his trial on those charges on March 29, 1976 through April 9, 1976, reveal that law enforcement agents of three (3) New Jersey counties were present at these proceedings. A true and correct copy of those parts of Plaintiff Adams' trial transcript, (Nos. 623-641, December Term, 1975, before the Honorable Angelo A. Guarino, and a jury, Room 443, City Hall, Philadelphia County), is attached hereto and marked as Plaintiff's Exhibit "A".

Plaintiff Adams cannot attach a copy of his Preliminary Arraignment transcript, or Preliminary Hearing transcript, because none has ever been supplied to him.

19. Plaintiff Adams' custody is requested by the State of New Jersey, for prosecution in connection with a number of offenses which such state charges him with committing against its peace and dignity, and in violation of its laws; all such offenses charged with having occurred during the year of 1973.

20. Plaintiff Adams has long been aware of the accusations contained in the Request for Temporary Custody lodged against him on May 3, 1977. A true and correct copy of this Request, under the Interstate Agreement, is attached hereto and marked as Plaintiff's Exhibit "B". However, because he was in the Commonwealth of Pennsylvania on the dates of most when most of these offenses were stated to have occurred, and could produce witnesses

to so testify in the event that he was formally charged and brought to trial, he believed that these charges had long since been dismissed.

21. Plaintiff Adams' main alibi witness, his mother, however, is now deceased, thereby providing Defendant Shusted with an unfair advantage; an advantage secured by Defendant Shusted's deliberate failure to lodge his detainer until May 3, 1977, although he has been aware of Plaintiff Adams' whereabouts for at least one and one-half years. Had Defendant Shusted lodged his detainer timely, Plaintiff Adams would have requested prompt disposition thereof, pursuant to the provision that, upon request, trial must begin within one-hundred and eighty days (180). Therefore, Defendant Shusted's failure to lodge such detainer, timely, has not only deprived Plaintiff Adams of his right to a speedy trial, but has also operated to so prejudice his defense as to deprive him of his right to a fair trial; both rights secured to him by the Sixth Amendment to the United States Constitution.

22. Despite the allegations of paragraph 21, *supra,* Plaintiff Adams truly believes that, were he afforded the procedural rights of the Uniform Extradition Act, there is a strong possibility that Defendant Shusted would be unable to prove that Plaintiff was in the State of New Jersey on at least several of the dates listed in the Request; and, therefore, that the Pennsylvania Court would not permit Plaintiff's extradition.

LEGAL CLAIMS

23. The Interstate Agreement on Detainers, 19 P.S. §§1431 et seq., as applied to Plaintiff Adams, and those unnamed members belonging to the class of persons

similarly situated, is unconstitutional for the reasons set forth in paragraphs 10 through 16, *supra;* being in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

24. The acts and practices of Defendant Cuyler, in agreeing to proceed under the Interstate Agreement on Detainers, 19 P.S. §§1431 et seq., and to ignore the procedure rights of the Uniform Extradition Act, 19 P.S. §§191.1 et seq., for all plaintiffs confined in S.C.I.G., whose custody is requested by foreign states, deprive them of rights secured to them by the Due Process Clause of the Fourteenth Amendment.

25. By failing to inform plaintiffs of their right to appeal to the Governor of Pennsylvania to disapprove of the said Requests for Temporary Custody, Defendant Cuyler deprives them of their right to due process of the law; such right also secured by the Fourteenth Amendments to the United States Constitution.

26. By information and belief, Plaintiff Adams avers that prior attempts to seek relief from delivery into the hands of the agents and servants of Defendant Shusted, by way of petitioning the Court of Common Pleas, Montgomery County, Pennsylvania, for a writ of habeas corpus or either a temporary or permanent injunction restraining Defendant Cuyler from such delivery, have been ignored. Therefore, plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiffs have been and will be continually irreparably injured by the conduct of the defendants unless this Court grants the declaratory and injunctive relief which plaintiffs seek.

WHEREFORE, plaintiffs respectfully pray that this Honorable Court enter judgment granting plaintiffs:

1. A declaratory judgment that defendants' acts, policies and practices as described herein violate plaintiffs' rights under the United States Constitution.

2. A preliminary and permanent injunction which:

(a) Restrains Defendant Cuyler from delivering custody of any and all plaintiffs herein to the agents and/or servants of any foreign state, in response to a Request for Temporary Custody under the Interstate Agreement on Detainers, 19 P.S. Sections 1431 et seq., until this Court Rules on the Constitutionality of such Agreement.

(b) Restrains and enjoins any and all superintendents, wardens, or other such persons having custody of the inmates of Pennsylvania's prisons, jails, state hospitals, etc., et al, from delivering such inmates into the custody of a foreign state in response to such Request under the Agreement; until the Court Rules on the constitutionality of such Agreement.

(c) Or, in the alternative;

Plaintiff John Adams prays this Honorable Court to issue a preliminary and permanent injunction restraining Defendant Cuyler from delivering him over to the custody of Defendants Doe and Roe, for transportation to the State of New Jersey and the custody of Defendant Shusted, without first bringing him before a court of record in the state of Pennsylvania and affording him the procedural rights provided by the Uniform Extradition Act.

Or, in the alternative;

Should Plaintiff Adams be delivered into the custody of Defendants Doe and Roe, and transported to the State

of New Jersey before this Court has the opportunity to review this pleading and act thereon, issue a preliminary and permanent injunction which:

(d) Prohibits Defendant Shusted from prosecuting Plaintiff Adams in connection with the offenses charged in Plaintiff's Exhibit "B", until such time as this Court determines the constitutionality or unconstitutionality of the interstate transfer of Plaintiff Adams;

(e) Requires Defendant Shusted to return Plaintiff Adams to the custody of the State of Pennsylvania, pending the aforementioned determination;

(f) Provides that Plaintiff Adams be awarded compensatory damages in the amount of $10,000 from Defendants Cuyler and Shusted, and each of them, and compensatory damages in the amount of $5,000 from all other defendants, and each of them, for the physical discomfort he will have suffered from confinement in the cruel and inhuman condition prevalent in the Camden County Jail and the emotional pain and stress he has already suffered, and will suffer, because of the deprivation of his constitutionally secured rights by the defendants herein.

Respectfully submitted,

John Adams
John Adams, No. F-6598
State Correctional Institution
Graterford, Pennsylvania 19426

In Propria Persona

[Title Omitted in Printing]

Commonwealth of Pennsylvania
County of Montgomery ss:

I, JOHN ADAMS, being duly sworn, depose and say:

1. I am the named plaintiff in the above-titled action.

2. I believe I am entitled and intend to bring this action in the United States District Court for the Eastern District of Pennsylvania against the above-named defendants.

3. The action seeks to enjoin those defendants from delivering over custody of the plaintiffs herein to the agents and/or servants of any foreign state, in response to a Request for Temporary Custody under the Interstate Agreement on Detainers, Title 19, Purdon's Statutes, Section 1431 et seq., and seeks damages in the amount of $40,000 for deprivation of Plaintiffs' civil rights.

4. I believe that I am entitled to the redress sought in this action.

5. I have read and know the contents of the attached Complaint and the same are true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

(s) John Adams
Affiant

[Jurat Omitted in Printing]

[Note: Motion for Leave To Proceed in Forma Pauperis and Affidavit in Support Thereof Omitted. Proposed Order Omitted.]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MEMORANDUM OF LAW AND AFFIDAVIT IN SUPPORT OF PLAINTIFF JOHN ADAMS' REQUEST FOR A TEMPORARY RESTRAINING ORDER

Civil Action No.

JOHN ADAMS, et al.,

Plaintiffs

vs

JULIUS T. CUYLER, et al.,

Defendants

The command of Rule 65 (d), Federal Rules of Civil Procedure, being clear, only a clear showing that irreparable harm will incur should immediate relief not be granted, will operate to excuse failure to give the required notice.

Plaintiff John Adams believes that the peculiar circumstances of the instant matter, as delineated in the Complaint, and the affidavit attached to the instant memorandum, meet the requirements of Rule 65 (b), supra.

For a motion for a preliminary injunction to be granted, the movant must show a substantial likelihood

of success on the merits, and, that irreparable harm will flow from the denial of such injunction; in addition, the trial judge must consider the inconvenience that an injunction would cause the opposing party, and weigh the public interest as well. *Creque v. Government of the Virgin Islands,* 354 F. Supp. 849 (D.C.V.I. 1973); *McGuire Shaft & Tunnel Corp. v. Local 1791, United Mine Workers of America,* 475 F.2d 1209 (Em. App. 1973).

Here, the Court is presented with an action wherein, should the requested Temporary Restraining Order not be granted, Plaintiff Adams will certainly be delivered into the custody of the agents, employees or servants, of Defendant Thomas Shusted, by Defendant Julius T. Cuyler, in response to the "Request for Temporary Custody", under the Interstate Agreement on Detainers, 19 P.S. §1431 et seq., lodged by Defendant Shusted against Plaintiff Adams on May 3, 1977.

The purpose of the said "Request", as clearly stated therein, is to bring Plaintiff Adams to trial on offenses charged against him in the State of New Jersey. See Plaintiff's Exhibit "B". Since it is just as clear that Defendant Shusted has been aware of Plaintiff Adams' whereabouts for a period of time certainly exceeding fourteen (14) months, and possibly in excess of twenty-three (23) months, little or no inconvenience would result to Defendant Shusted by the issuance of the requested T.R.O. As for the other defendants, there is no question of causing them any inconvenience at all.

On the other hand, should the requested relief be denied, this Court may take judicial notice of the fact that Plaintiff Adams will surely be transferred to the

State of New Jersey, and, just as surely, be tried on the charges there pending against him.

Whether Defendant Shusted's delay, of approximately four (4) years, in bringing his accusations against Plaintiff Adams, would operate to deny the plaintiff his constitutionally secured right to a fair trial because of the death of his mother on February 4, 1977, is problematical. However, in the light of the fact that his late mother was prepared to swear that the plaintiff was not even present in the State of New Jersey, but at her home in Philadelphia, Pennsylvania, on the dates when several of the offenses charged are alleged to have occurred, there is no doubt that Plaintiff Adams' defense against such charges would be severely hampered.

It is therefore respectfully contended that, unless this Honorable Court issues the requested T.R.O., and allows him to present evidence of Defendant Shusted's deliberate and willful delay in requesting his custody until after the recent death of his main alibi witness at the hearing on his application for a preliminary injunction, irreparable harm in the form of a criminal conviction for an offense which he did not commit is likely to befall Plaintiff John Adams. This likelihood, of an unjust criminal conviction, meets the requirement that the "irreparable injury" for purposes of a temporary restrain-order or preliminary injunction, be, in part, that for which the award of monetary damages cannot compensate. *Heidman v. U.S. Lawn Tennis Ass'n,* 354 F. Supp. 1241 (D.C. N.Y. 1973).

The probability of success on the merits may be gauged by the Opinion and Order of the Honorable Herbert A. Fogel, speaking for this very Court, in the matter

of *James E. Danzy v. Robert L. Johnson, No.* 74-100 (August 4, 1976), (Unreported).

In *Danzy, supra,* the identical question of whether the denial to persons extradited under the Interstate Agreement on Detainers, 19 P.S. §1431 et seq., of those procedural rights which are afforded to individuals who, at the election of the foreign state, are extradited under the Uniform Criminal Extradition Act, 19 P.S. §191.1 et seq., violate the equal protection clause of the Fourteenth Amendment, was presented. *Danzy, supra,* slip opinion at p. 1. There, however, the plaintiff failed to either seek class action relief, (*Danzy supra,* at p. 12), or, to claim damages, (*Danzy, supra,* at p. 10), and the injunctive and declaratory relief sought was not granted. Judge Fogel's exhaustively researched opinion outlines in detail the factors to be weighed in determining whether the Court should decline the relief sought for mootness and concludes. (*Danzy, supra,* Slip Opinion at page 13):

> "*First of all,* a timely and proper claim for damages would clearly have avoided, and in future cases would avoid a determination that the action is moot,
>
> *Second, no effort has even been made to amend the complaint to include a request for class relief.* * * * Thus, an action commenced in the future, presenting the same issues which plaintiff has attempted to raise in this case, as soon as notice of an impending transfer were given, coupled with a request for class relief, would negate the question of mootness." (Emphasis in original.)

Plaintiff Adams has complied with both of the above requirements; seeking monetary damages *and* requesting class relief.

For the above-mentioned reasons, and the facts attested to in both the Complaint and the affidavit attached hereto, it is respectfully urged that the Court grant Plaintiff Adams' request for a temporary restraining order.

Respectfully submitted,

(s) John Adams
John Adams, No. F-6598
State Correctional Institution
P. O. Box 244
Graterford, Pennsylvania 19426

In Propria Persona

Dated: May 27, 1977

Commonwealth of Pennsylvania
County of Montgomery ss:

AFFIDAVIT

I, JOHN ADAMS, being duly sworn, depose and say:

1. I am the plaintiff, in the matter of ADAMS V. CUYLER, et al.; and the movant in the attached request for a temporary restraining order. I have read the contents thereof, and the same are true to the best of my knowledge, information and belief.

2. A Request for Temporary Custody under the Interstate Agreement, 19 P.S. §§1431 et seq., was lodged against me, at the State Correctional Institution at Graterford, Pennsylvania, by Defendant Shusted, on May 3, 1977.

3. Although I was provided with a copy of such request, by an employee of Defendant Julius T. Cuyler, I was never officially notified of my right to petition the Governor of Pennsylvaina to disapprove such request, and, was only informed of this right, and the procedural rights afforded those persons who, at the election of a foreign state, are extradited under the Uniform Extradition Act, 19 P.S. §§191.1 et seq., by a fellow-inmate who is also a trained paralegal.

4. The Complaint, and all pleadings submitted therewith, in the instant matter, were prepared for me by this same paralegal; under my direction, but the facts therein were dictated by myself and are true of my own knowledge, information and belief.

5. That Defendant Shusted was, at least since the date of my trial in the State of Pennsylvania which began on March 29, 1976, aware of my whereabouts, is proven by the photocopies of pages of such trial transcript, attached hereto and marked as Plaintiff's Exhibit "A". Yet, as shown by Plaintiff's Exhibit "B", Defendant Shusted did not lodge his Request until May 3, 1977.

6. It is plaintiff's belief, and contention, that Defendant Shusted's failure to request my custody at an earlier date, and his lodging such request almost exactly three (3) months subsequent to the death of my mother on February 4, 1977, was occasioned by Defendant Shusted's knowledge that my mother would testify that I was with her, in Philadelphia, Pennsylvania, on the dates of at least several of the offenses with which I am accused in New Jersey. It is my further belief, and contention, that Defendant Shusted did not lodge his Request for my custody until being informed of the death of my mother; therefore, that the lodging of such request was deliberately delayed, and, that Defendant Shusted is now willfully engaged in a deliberate attempt to acquire custody of me in order to deprive me of the right to a fair trial secured to me, and all citizens, by the Sixth and Fourteenth Amendments to the United States Constitution.

7. At least one, and probably more, of the inmates of the State Correctional Institution at Graterford, Pennsylvania, has attempted to contest being transferred to the State of New Jersey, pursuant to a like Request, by filing a petition for writ of habeas corpus in the Court of Common Pleas for Montgomery County, but that court refused to hear such petition, or, to enjoin or restrain the Superintendent from transferring custody of him to the agents of Thomas Shusted.

8. Although I am now aware of my procedural rights, such as they are, under the Interstate Agreement, such knowledge was only imparted to me on May 24, 1977, too late to prevent Defendant Shusted from acquiring custody of me even should Defendant Shapp disapprove his request.

9. I am, personally, acquainted with numerous persons confined in the Correctional Institutions, prisons and jails of Pennsylvania who have been or are now awaiting transfer to the custody of foreign states pursuant to the said Agreement; but none whose extradition was or is requested under the Uniform Extradition Act. This fact, however, may more properly be verified by this Honorable Court by the exercise of its powers to compel the production of the records of such requests.

10. My pending transfer to the custody of a foreign state, pursuant to an Agreement which allows me no adequate remedy at law, and not even the opportunity to contest such extradition in a court of record, has caused and is causing me such anxiety and concern as to seriously imperil my health and well-being; already resulting in my being prescribed tranquilizers by the institutional physician.

11. Additionally, if such transfer is consummated, my prison wages of approximately $1.00 a day will terminate. There is no opportunity for inmates confined in the Camden County Prison to earn money for their either necessities or luxuries, and my poverty will prevent my purchasing such items as are sold at that prison's canteen; thus causing me undue hardship.

12. Because of the living conditions, prevelant in the said Camden County Jail, it is reported in the media

of both New Jersey and Pennsylvania that there are presently several actions pending in the United States District Court for the District of New Jersey seeking relief in the form of a declaratory judgment that such conditions constitute the "cruel and unusual punishment" prohibited by the Eighth and Fourteenth Amendments to the United States Constitution. The prospect of confinement, for an undetermined period of time, under such conditions, is presently causing me undue concern and anxiety.

13. Although I am without sufficient personal knowledge to verify the truth or falsity of such statements, I have been informed by other inmates of S.C.I.G., who have previously been transferred to the custody of Defendant Shusted, pursuant to the said Agreement, that it is the practice of Defendant Shusted to deliberately delay the appearance in the courts of New Jersey of such "transferees" for periods in excess of three (3) or four (4) months, refusing to return them to the custody of Pennsylvania until the oppressive conditions in the Camden County Jail become so intolerable that they plead guilty to state criminal charges just to be returned to the custody of Pennsylvania.

(s) John Adams
Affiant

[Jurat Omitted in Printing]

EXHIBIT "A"

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* * * * * * * *

(1008) is excused?

MR. CASEY: I would request that.

THE COURT: All right, he's excused.

MR. CASEY: Thank you, Mr. Loughlin.

(Whereupon the witness is excused.)

MR. CASEY: Officer Paul Leusner.

PAUL LOUIS LEUSNER, Badge No. 815, Palmyra, New Jersey, Police Department, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Officer Leusner, once again, keep your voice up so everyone can hear you.

In March—on March 1st of '73, were you employed?

A. Yes, sir, I was.

Q. How were you employed?

A. I was employed as a patrolman on the Cinnaminson Township Police Department.

Q. Were you working that day?

A. Yes, I was. I was on the three to eleven shift.

Q. Is that three in the afternoon you're working?

A. That's three in the afternoon till eleven at night.

Q. At any time during your tour of duty, did you have

* * * * * * * *

(1034) admissibility, of course.

THE COURT: All right. The record is clear. We'll proceed.

MR. CASEY: Thank you, your Honor.)

(The following takes place in open Court.)

MR. CASEY: Officer, would you take stand, please.

FREDERICK HILL, Badge No. 23, Patrolman, Cinnaminson Township Police Department, Cinnaminson, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Officer Hill, directing your attention to March 1st of 1973, how were you employed?

A. I was employed as a patrolman.

Q. In what community?

A. In Cinnaminson, on the 3 p.m. to 11 p.m. shift.

Q. That's located in New Jersey. Is that correct?

A. Yes.

Q. What was your specific assignment on that date? Were you working in the office or assigned to a patrol car?

* * * * * * * *

(1044) MR. MONTGOMERY: Bear with us for a second, your Honor.

THE COURT: Yes.

(Pause.)

MR. FITZPATRICK: On behalf of George Wallace, your Honor, I have no questions of this witness.

MR. MONTGOMERY: On behalf of Robert Cullen, no questions, sir.

MR. BOLNO: No questions.

THE COURT: All right.

MR. CASEY: May the officer be excused, if Counsel has no objection?

THE COURT: Yes, he's excused.

(Whereupon the witness is excused.)

MR. CASEY: May I call the next witness, sir?

THE COURT: Yes.

MR. CASEY: Detective Sergeant Adams, will you take the stand, please.

WILLIAM ADAMS, Detective Sergeant of Police, Badge No. 3, Cinnaminson Police Department, Cinnaminson, New Jersey, having been duly sworn, testified as

* * * * * * * *

(1370) Afternoon Session
April 23, 1976

(Whereupon the Jury enters the Courtroom.)

MR. CASEY: May I proceed?

THE COURT: You may call your next witness.

MR. CASEY: Thank you, your Honor. Sergeant Russel Williams. Sergeant, will you take the stand, please.

RUSSEL WILLIAMS, Sergeant, Badge No. 7, Cinnaminson Police Department, Cinnaminson, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Sergeant, how long have you been a member of the Cinnaminson Police Department?

A. Thirteen years.

Q. Were you working on May 30th of 1973?

A. Yes, sir.

Q. What time did you come on duty, Sergeant?

A. 11 p.m.

* * * * * * * *

(1379) A. I'd have to guess at the time, I don't know exactly the time.

Q. To the best of your ability to remember.

A. I'd say it was within ten minutes.

Q. And how long after he arrived did he turn off the car?

A. Oh, matter of maybe two, three minutes after he got there.

MR. BOLNO: No further questions.

MR. CASEY: I have nothing on redirect, your Honor.

THE COURT: All right. Sergeant Williams, you're excused.

(Whereupon the witness is excused.)

MR. CASEY: Detective Bowen.

JOSEPH BOWEN, Badge No. 12, Cinnaminson Police Department, Cinnaminson, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Detective Bowen, two pictures have been marked for identification as C-13 and 14. The Court Officer—I'll request that he show you those. Who took those pictures?

A. I did.

* * * * * * * *

(1486) JAMES RICHARD GILBERT, 8 Stuart Avenue, Delran, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Officer Gilbert, how were you employed on July 29th of 1973?

A. A patrolman for the Delran Township Police Department.

Q. How long have you been so employed?

A. Approximately three years, sir.

Q. On the date I'm asking you about, what times or tour of duty were you working?

A. I was scheduled for the eight to four shift.

Q. Did you work that shift or did you work another shift?

A. No, I worked the eight to four shift that day.

Q. Is that the 29th?

A. Yes, sir.

Q. At any time did you become aware of a robbery which had occurred in Delran, New Jersey, in the Millside Shopping Center of a Pantry Pride?

A. Yes, sir, I did.

* * * * * * * *

(1492) Honor.

MR. BOLNO: I have no questions.

(Whereupon the witness is excused.)

THE COURT: Detective Reynolds.

CHARLES D. REYNOLDS, Delran Township Police Department, Delran, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Detective Reynolds, how long have you been a member of the Delran Police Department?

A. Eight years, sir.

Q. In July of '73, did you have occasion to investigate a robbery of a Pantry Pride occurring in the Millside Shopping Center, Delran, New Jersey?

A. Yes, sir, I did.

Q. As part of that investigation, did you at least come into contact with an individual named William Eggert?

A. Yes, sir, I did.

Q. On what date did you receive the robbery report?

A. The 28th of July, 1973.

Q. What date or day of the week was that, do you recall, Detective Reynolds?

* * * * * * * *

(1626) Afternoon Session
April 28, 1976

(All parties present except Joseph Montgomery, Esq.)

THE COURT: All right. Are we ready to proceed?

MR. FITZPATRICK: Your Honor, I would call Officer Brinkman.

ANTHONY R. BRINKMAN, Detective, West Deptford Township Police Department, West Deptford, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. FITZPATRICK:

Q. Detective Brinkman, how long have you been a police officer?

A. Been nine years 5 June this year.

Q. And how long have you been a detective?

A. Four years.

Q. All right. Officer, you were assigned to the investigation of the Pantry Pride incident on September the 1st?

* * * * * * * *

(1637) part of it?

A. That's correct.

Q. If in fact—okay. All right.

MR. FITZPATRICK: I have no other questions of Officer Brinkman.

MR. CASEY: I have no questions of Detective Brinkman, your Honor.

MR. FITZPATRICK: Excuse me, Detective Brinkman.

(Whereupon the witness is excused.)

MR. FITZPATRICK: Your Honor, if I may have a moment with Officer White, it could be right here without having a recess.

(Pause.)

THE COURT: All right. Are we ready, gentlemen?

MR. FITZPATRICK: Officer White.

EDWARD WHITE, Badge No. 417, West Deptford Township Police Department, West Deptford, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. FITZPATRICK:

Q. Officer White, did you interview at any time or

* * * * * * * *

(2197) Craus.

(Whereupon the witness is excused.)

MR. CASEY: Sergeant Fuller, will you take the stand, please.

JAMES R. FULLER, Sergeant, Stratford Police Department, Startford, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Sergeant Fuller, how long have you been a member of the Stratford, New Jersey, Police Department?

A. Fourteen years, sir.

Q. On September 29th of 1973, were you working?

A. Yes, sir, I was.

Q. What times or tour of duty?

A. I was working from 4 p.m. to 12 midnight.

Q. What specific assignment did you have on that date, if you had a specific assignment?

A. No specific assignment routine patrol.

Q. And what kind of vehicle, sir?

A. Marked patrol car.

Q. Okay. Were you working alone or did you have a partner?

* * * * * * * *

(2216) JOHN JOYCE, Detective Sergeant, Stratford Police Department, Stratford, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Sergeant Joyce, how long have you been a member of the Stratford, New Jersey, Police Department?

A. Sixteen and a half years.

Q. Were you on duty on the night of September 29th, of 1973 or were you called on duty at any time that night?

A. I was on call that evening.

Q. Were you called to duty that evening?

A. Yes, sir, I was.

Q. Approximately what time were you called to duty, Sergeant?

A. Approximately 9:20 p.m.

Q. When you were called to duty, where did you go?

A. I—I proceeded to the Pantry Pride on U.S. Route 30 in Stratford.

Q. After you arrived at that scene, did you receive any information concerning a motor vehicle?

A. Yes, sir, I did.

Q. After you received the information concerning a motor

* * * * * * * *

(2252) CHARLES GORISH, 2158 Federal City Road, Lawrenceville, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Sergeant, what police department are you presently a member of?

A. It's the Lawrence Township Police Department.

Q. How long have you been employed as a police officer in Lawrence Township?

A. Twenty-one years.

Q. Were you working on November 23rd of 1973?

A. Yes, sir.

Q. What times or tour of duty were you working, sir?

A. Four—4 p.m. till midnight.

Q. What was your specific assignment? Were you working inside or outside?

A. It's both, inside and outside.

Q. In the area of 8:45, 9 p.m., were you inside or outside?

A. Outside.

Q. Did you have occasion to be in the area of the Lawrence Shopping Center, a Pantry Pride there at or about

* * * * * * * *

(2472) THE COURT: No. Mr. Carrero, you're excused.

(Whereupon the witness is excused.)

MR. CASEY: Officer Coxson, would you take the stand, please.

EARL COXSON, Badge No. 35, Cherry Hill Township Police Department, Cherry Hill, New Jersey, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. Officer Coxson, by what police department are you presently employed?

A. Cherry Hill, New Jersey.

Q. How long have you been so employed?

A. Four and a half years.

Q. Were you working on the night of May 15th, 1974?

A. Yes, sir, I was.

Q. What times or tour of duty were you working?

A. I was working a three to—3 p.m. to 1 a.m. shift.

Q. What was your specific assignment on that date?

A. West End Tactical Corps.

Q. What, if any, vehicle were you in?

EXHIBIT "B"

Office of The Prosecutor

CAMDEN COUNTY

Parkade Building—518 Market Street
Camden, New Jersey 08101

April 29, 1977

Julius T. Cuyler, Supt.
Pa. State Correctional Institution
Box 244
Graterford, Pa. 19426

Re: STATE vs. JOHN ADAMS—No. F-6598
Ind. No.—SGJ-30-75-1A

Dear Sir:

Enclosed please find Agreement on Detainers—Form No. 5—Request for Temporary Custody—in connection with the above captioned subject who is presently incarcerated in your institution.

Your kind and prompt attention and cooperation in this matter is appreciated.

Very truly yours,
Thomas J. Shusted
Camden County Prosecutor

BY: Josephine L. Sosa, Secy.
jls
Enc.
cc—John Adams—F-6598
Mrs. Kathryn Flicker
Deputy Attorney General

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form 2. In the case of a request initiated by a prosecutor this Form should be completed after the Governor has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. Copies of this Form should then be sent to all officials who previously received copies of Form 3. One copy also should be given to the prisoner and one copy should be retained by the warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested.

Agreement on Detainers: Form 4

OFFER TO DELIVER TEMPORARY CUSTODY

Date May 3, 1977

TO: (Insert name and Title if known) Thomas J. Shusted, Esq. Prosecuting Officer
(jurisdiction) Camden County, New Jersey

And to all other prosecuting officers and courts of jurisdiction listed below from which indictments, information or complaints are pending.

RE: (inmate) John William Adams Number F-6598

Dear sir:

Pursuant of the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offers to deliver temporary custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or com-

plaint which is described in your request of April 29, 1977.

(The required Certificate of Inmate Status is enclosed.)

If the proceedings under Article IV (d) of the Agreement are indicated, an explanation is attached.

Indictments, informations and complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

[Marginal Notation:]
30 day waiting period to apply

Five copies. Signed copies must be sent to the prisoner and to the official who has the prisoner in custody. A copy should be sent to the Agreement Administrator of the State which has the prisoner incarcerated. Copies should be retained by the person filing the request and the judge who signs the request.

Agreement on Detainers: Form 5

REQUEST FOR TEMPORARY DUTY

TO: JULIUS T. CUYLER (Superintendent) Pa. State Correctional at Graterford, Box 244, Graterford, Pa. 19426

Please be advised that JOHN ADAMS-F-6598, who is presently an inmate of your institution, is under (indictment) in the County of Camden of which I am the County Prosecutor.

Said inmate is therein charged with the (offenses) enumerated below:

OFFENSE

Conspiracy; Armed Robbery; Break. & Enter. W/I to Steal; Poss. Deadly Weapon & Unlaw. Use of Radio Receiver

I propose to bring this person to trial on this (indictment) within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such persons pursuant to Article IV(a) of the Agreement on Detainers.

Signed Thomas J. Shusted
(Camden County Prosecutor)
Thomas J. Shusted

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated: 4/28/77

Signed Charles [Illegible]
(Judge, Camden County Court)

4/22/77—jls

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-2075

JOHN ADAMS, et al.,

Plaintiffs,

v.

JULIUS T. CUYLER, et al.,

Defendants,

ANSWER

[Filed Sep 15 1977 John J. Harding, Clerk By Emj Dep. Clerk]

Defendant Milton Shapp and Julius T. Cuyler, by their attorney, Maria Parisi Vickers, Assistant Attorney General for Eastern Pennsylvania answer plaintiff's Complaint in the following manner:

1. This paragraph contains jurisdictional allegations to which no answer is required.

2. Admitted.

3. To the extent that this paragraph contains factual allegations, it is denied; to the extent that it contains conclusions of law, no answer is required.

4. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

5. It is admitted that Julius Cuyler is the Superintendent of the State Correctional Institution at Graterford, the remaining allegations in this paragraph are conclusions of law to which no answer is required.

6. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

7. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

8. Admitted that Milton Shapp is the legally elected Governor of the Commonwealth of Pennsylvania, the remaining allegations in this paragraph are conclusions of law to which no answer is required.

9. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

10. This paragraph states a conclusion of law to which no answer is required.

11. Denied.

12. This paragraph states a conclusion of law to which no answer is required.

13. This paragraph states a conclusion of law to which no answer is required.

14. To the extent that this paragraph contains factual allegations, they are denied; to the extent that it contains conclusions of law, no answer is required.

15. Denied, strict proof thereof is demanded at trial.

16. Denied, strict proof thereof is demanded at trial.

17. Admitted.

18. Denied, strict proof thereof is demanded at trial.

19. Denied, strict proof thereof is demanded at trial.

20. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

21. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

22. Defendants are without knowledge as to the truth or falsity of this allegation and demands strict proof at trial.

23. This paragraph states a conclusion of law to which no answer is required.

24. This paragraph states a conclusion of law to which no answer is required.

25. This paragraph states a conclusion of law to which no answer is required.

26. To the extent that factual allegations are contained in this paragraph, defendants are without knowledge as to the truth of these allegations and demand strict proof thereof at trial; to the extent that this paragraph contains conclusions of law, no answer is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

This Court lacks jurisdiction over the parties and subject matter of this lawsuit.

Second Affirmative Defense

This Complaint fails to state a claim upon which relief can be granted.

Third Affirmative Defense

Defendants have not participated in any conspiracy.

Fourth Affirmative Defense

Defendants are immune from suit.

Fifth Affirmative Defense

The Complaint fails to allege direct involvement or actual participation by defendants in the alleged constitutional violations against plaintiff.

Sixth Affirmative Defense

Defendants assert each and every defense available under the Civil Rights Act.

WHEREFORE, defendants pray this Honorable Court to dismiss plaintiff's Complaint with prejudice.

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OPINION OF THE COURT OF APPEALS, MEMORANDUM AND ORDER OF THE DISTRICT COURT, INTERSTATE AGREEMENT ON DETAINERS AND UNIFORM CRIMINAL EXTRADITION ACT

[Note: The Memorandum and Order of the United States District Court for the Eastern District of Pennsylvania, filed October 26, 1977, appears as Appendix B in the Petition for Writ of Certiorari, p. 14a.]

[Note: The Opinion of the United States Court of Appeals for the Third Circuit, filed February 9, 1979, appears as Appendix A in the Petition for Writ of Certiorari, p. 1a.]

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In light of an explicit legislative intent to the contrary, is it proper to transfer prisoners, pursuant to Article IV of the Interstate Agreement on Detainers, without granting them the same procedural safeguards afforded by the Uniform Criminal Extradition Act?

STATEMENT

Respondent, John Adams, is an inmate at the State Correctional Institution at Graterford, Pennsylvania. On May 3, 1977, Thomas Shusted, Camden County Prosecutor, made a request to Julius Cuyler, the Superintendent at Graterford, for temporary custody of Adams under the Interstate Agreement on Detainers ("Detainer Agreement"), Pa. Stat. Ann. Tit. 19, §§1431-1438. The request sought the removal of Adams from Graterford and his transportation to a Camden County, New Jersey jail. Adams was to remain in custody in New Jersey pending disposition of criminal charges which had been lodged against him there.

Adams received a copy of the request but was not told that his transfer would be delayed thirty days during which he could petition respondent governor to disapprove his transfer. Accordingly, Adams did not petition for disapproval of the transfer, nor did respondent governor disapprove the transfer on his own motion. Nor did Adams receive a hearing before being shipped to the Camden jail.[1]

---

1. In the complaint which Adams filed in this case, he alleged specific facts which would have been likely to have persuaded the governor or a fact finder at a hearing not to order his transfer.

Adams then instituted this class action, on behalf of himself and other similarly situated, pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, in the United States District Court for the Eastern District of Pennsylvania. The class sought damages, a declaratory judgment and injunctive relief. The complaint alleged that the Detainer Act violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution because it failed to provide that inmates transferred pursuant to the Agreement be advised of the right to petition the governor for review of the custody request. The complaint also stated that the Due Process clause was offended by the Agreement's failure to provide for any pre-transfer hearing. Finally, the complaint alleged that the failure to apply the hearing requirements of the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31, to transfers made pursuant to Article IV of the Detainer Act, deprived the class of equal protection of the law.

The district court summarily dismissed Adams' complaint for failure to state a claim.

Adams appealed the decision. The United States Court of Appeals for the Third Circuit did not reach the constitutional claims. Instead, the Court held that, on the basis of the clear language of Article IV(d) of the Detainer Agreement and its legislative history, prisoners transferred under the Agreement are entitled to the same procedural safeguards provided in the Extradition Act except that affirmative consent of the governor of the sending state is not required.

REASONS FOR DENYING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS FULLY CONSIDERED AND CORRECTLY INTERPRETED THE DETAINER AGREEMENT

In a carefully considered opinion, the Court of Appeals for the Third Circuit held that, as a matter of statutory construction, Article IV(d) of the Detainer Agreement requires that all of the rights granted to inmates under the Extradition Act, including the right to a pre-transfer hearing, be afforded to inmates transferred between states pursuant to the Detainer Agreement. In the opinion, the court examined both the language of Article IV of the Detainer Agreement and the Council of State Government's comments on the proposed Detainer Agreement.

The major purpose of the Act was to simplify the procedure for clearing criminal detainers. The language of Article IV(d) makes it clear, however, that when the state, rather than the prisoner, initiates the transfer, all of the protections of the Extradition Act except the requirement of affirmative approval of the governor of the sending state, were retained.

Moreover, the comments make it clear that the drafters intended to make the distinction which is implicit in the text of Articles III and IV. The comments state, in pertinent part:

> "The situation contemplated by this portion of the agreement is different than that dealt with in Article III. That Article relates to proceedings initiated at the request of the prisoner. Accordingly, in such

> instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights."

Council of State Governments, Suggested State Legislation, Program for 1957, at 78-79 (1956).

This, by construing the statute to require that the protections of the Extradition Act be extended to prisoners transferred involuntarily pursuant to the Detainer Agreement, the Court of Appeals was simply effectuating the desires of the legislatures which adopted the Detainer Agreement. The legislative history is clear; Article IV of the Detainer Agreement retains the protections of the Extradition Act. The Court of Appeals, therefore, correctly decided the issues.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE COURT OF APPEALS IN THIS CASE AND ANY REASONED DECISION OF ANY FEDERAL OR STATE COURT

Petitioners make much of the Fifth Circuit's recent decision in *Atkinson v. Hanberry*, 589 F.2d 917 (5th Cir. 1979), a case similar to the case *sub judice*. There, a federal inmate in Georgia sought to enjoin his involuntary transfer to Ohio pursuant to the Detainer Agreement. He contended that the Detainer Agreement and due process mandated a hearing prior to transfer. The Fifth Circuit rejected both his statutory and constitutional claims.

On its face, this decision conflicts with the Third Circuit's decision in this case. In *Atkinson*, however, the

court addressed the issue of statutory construction summarily, stating only that the Detainer Agreement did not explicitly or implicitly provide a right to a hearing. The Fifth Circuit neither analyzed the language of Article IV(d) of the Agreement nor examined the legislative history behind it. Thus, the court incorrectly concluded that the provision that no affirmative consent of the governor of the sending state was required under Article IV(d) indicated an intention of the drafters not to give the prisoner a right to a pre-transfer hearing. 589 F.2d at 919. More important, by failing to focus on the language of Article IV(d) preserving the rights of transferees, and disregarding the right to a pre-transfer hearing under the Extradition Act, the court never answered the obvious argument that granting inmates a pre-transfer hearing would merely preserve their rights, not expand them. Therefore, while there may be a conflict between the decision in this case and the Fifth Circuit's decision in *Atkinson*, it is plain that the *Atkinson* court failed to make the sort of considered analysis which would establish a conflict in circuits worthy of this Court's attention.

The courts of six states have reviewed the matter of an inmate's pre-transfer rights under the Detainer Act. Of those six states, the courts in four have indeed held that an inmate is not entitled to a pre-transfer hearing or notice of his right to petition the governor.[2] However, in each instance the court examined only the constitutional issues, perfunctorily assuming that the Detainer Agreement could not be construed to afford inmates the rights provided by the Extradition Act. In no case were either the statutory language analyzed or the drafters' comments examined.

---

2. *See Commonwealth ex rel. Coleman v. Cuyler*, —— Pa. Superior Ct. ——, 396 A.2d 394 (1978); *Hystad v. Rhay*, 12 Wash. App. 872, 533 P.2d 409 (1975); *State v. Thompson*, 133 N.J. Super. 180, 336 A.2d 11 (1975); *Wertheimer v. State*, 294 Minn. 293, 201 N.W.2d 383 (1972).

As the courts did not address the issue of statutory construction, there can be no conflict with the Third Circuit's decision to afford inmates a pre-transfer hearing and notice, which was based wholly upon the construction of the statute's intended effect.[3]

A REVERSAL OF THE DECISION BELOW ON STATUTORY GROUNDS WOULD REQUIRE THIS COURT TO REACH SERIOUS CONSTITUTIONAL QUESTIONS NOT RAISED UNDER THE DETAINER AGREEMENT AS INTERPRETED BY THE COURT OF APPEALS

Adams' claim, brought pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, alleged that the Detainer Agreement offended both due process and equal protection principles. The Court of Appeals, following this Court's mandate in *Hagans v. Lavine*, 415 U.S. 528, 543 (1974), to avoid unnecessary constitutional adjudications, did not find it necessary to reach those claims after a meticulous consideration of the legislative intent behind the agreement led it to conclude that Adams was entitled to notice of the right to petition the governor and a pre-transfer hearing under the language of the Detainer Agreement.

If this Court were to grant the petition for certiorari and adopt a different interpretation of the Detainer Agreement from the Third Circuit's, it would then have to face serious constitutional challenges to Article IV of that

---

3. Even if the state courts had reached the statutory construction-question, their decisions would be entitled to little weight in determining whether this Court should review the decision below, since the interpretation of interstate compacts under Article I, §10, cl. 3 of the Constitution is a matter of federal law. *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959); *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 507 F.2d 517 (9th Cir. 1974), *cert. denied*, 420 U.S. 974 (1975).

agreement. Indeed, while three intermediate appellate courts have held the agreement constitutional despite an interpretation denying notice or hearing, two of the three highest state courts to reach the question have held that the Detainer Agreement would be unconstitutional if notice and hearing were denied,[4] evidencing the complexity and difficulty of the questions that Adams raised. Yet, as the Court of Appeals' decision in this case demonstrates, these intricate constitutional issues need not be reached if the agreement is interpreted to preserve the involuntary transferee's rights to notice and hearing.

4. *See Moen v. Wilson*, 189 Colo. 85, 536 P.2d 1126 (1975); *State ex rel. Gardner v. Gray*, 55 Wis. 2d 574, 201 N.W.2d 163 (1972); cases cited in note 1, *supra*.

CONCLUSION

The Detainer Agreement is a significant achievement in field of criminal justice, cutting away the red tape and cumbersome proceedings previously necessary to bring prisoners in other states to justice. Yet the explicit legislative intent to reduce obstacles hindering the speedy resolution of criminal detainers is balanced by an equally explicit legislative desire not to deprive inmates of those liberties left to them by the state. The United States Court of Appeals for the Third Circuit painstakingly scrutinized the legislative desires, and correctly found that the Detainer Agreement reserved to inmates the rights previously afforded them by the Extradition Act. The decision does not substantially conflict with any other reasoned decisions, state or federal. Finally, the Third Circuit holding makes it unnecessary for this Court to become mired in the constitutional imbroglio that has developed in this area of the law.

For these reasons, the Court should deny the petition.

Respectfully submitted,

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Dated: July 13, 1979

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

APPEAL FROM THE JUDGMENT OF
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONERS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, reversing the opinion of the United States District Court, is reported at 592 F.2d 720 (3d Cir. 1979) and is set forth as Appendix A in the Petition for Writ of Certiorari, p. 1a-13a.

The opinion of the United States District Court is reported at 441 F. Supp. 556 (E.D. Pa. 1977) and is set forth as Appendix B in the Petition for Writ of Certiorari, p. 14a-19a.

JURISDICTION

The judgment of the United States Court of Appeals was entered on February 9, 1979. Petitioners' prayer for enlargement of time granted petitioners until June 9, 1979 to file a petition for writ of certiorari, at which time the petition was filed. Certiorari was granted on February 19, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1), and Section 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

United States Constitution,
Article IV Section 2, Clause 2.
Extradition

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

United States Constitution,
Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19 Sections 1431-1438 (Purdon 1964)

Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19 Sections 191.1 *et seq.* (Purdon 1964 & Supp. 1978)

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§1431. AGREEMENT AND PROCEDURE

The Agreement on Detainers is hereby enacted into law and entered into by this Commonwealth with all other jurisdictions legally joining therein in the form substantially as follows:

Agreement on Detainers

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions,

produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III. hereof or at the time that a request for custody or availability is initiated pursuant to article IV. hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III. or article IV. hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the

term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certificated mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this

paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V. (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the

receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V. (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III. or article IV. hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient

prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III. of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III. or article IV. hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order, dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which

form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting presecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being held [1] shall be responsible for the prisoner

1. Enrolled bill reads "had."

and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in article III. and IV. of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

This agreement shall be liberally construed so as to effectuate its purpose. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. 1959, Sept. 8, P.L. 829, No. 324, §1.

§1432. APPROPRIATE COURT

The phrase "appropriate court" as used in the Agreement on Detainers shall, with reference to the courts of this Commonwealth, mean any criminal court or any court having jurisdiction over indictable offenses. 1959, Sept. 8, P.L. 829, No. 324, §2.

UNIFORM CRIMINAL EXTRADITION ACT

Sec.

191.1 Definitions.
191.2 Fugitives from justice; duty of governor.
191.3 Form of demand.
191.4 Governor may investigate case.
191.5 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.
191.6 Extradition of persons not present in demanding state at time of commission of crime.
191.7 Issue of governor's warrant of arrest; its recitals.
191.8 Manner and place of execution.
191.9 Authority of arresting officer.
191.10 Rights of accused person; application for writ of habeas corpus.
191.11 Penalty for noncompliance with preceding section.
191.12 Confinement in jail; when necessary.
191.13 Arrest prior to requisition.
191.14 Arrest without a warrant.
191.15 Commitment to await requisition; bail.
191.16 Bail in what cases; conditions of bond.
191.17 Extension of time of commitment; adjournment.
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191.19 Persons under criminal prosecution in this state at time of requisition.
191.20 Guilt or innocence of accused; when inquired into.
191.21 Governor may recall warrant or issue alias.
191.22 Fugitives from this state; duty of governor.
191.23 Application for issuance of requisition; by whom made; contents.
191.24 Costs and expenses.

191.25 Immunity from service of process in certain civil actions.
191.26 Written waiver of extradition proceedings.
191.27 Non-waiver by this state.
191.28 No right of asylum; no immunity from other criminal prosecutions while in this state.
191.29 Interpretation.
191.30 Constitutionality.
191.31 Short title.

§191.1 DEFINITIONS

Where appearing in this act the term "Governor" includes any person performing the functions of governor by authority of the law of this State. The term "executive authority" includes the Governor and any person performing the functions of governor in a state other than this State. The term "state", referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America. 1941, July 8, P.L. 288, §1.

§191.2 FUGITIVES FROM JUSTICE; DUTY OF GOVERNOR

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State. 1941, July 8, P.L. 288, §2.

§191.3 FORM OF DEMAND

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing, alleging, except in cases arising under section 6,[1] that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. 1941, July 8, P.L. 288, §3.

1. Section 191.6 of this title.

§191.4 GOVERNOR MAY INVESTIGATE CASE

When a demand shall be made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand and to report to him the situa-

tion and circumstances of the person so demanded and whether he ought to be surrendered. 1941, July 8, P.L. 288, §4.

§191.5 EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN ANOTHER STATE OR WHO HAVE LEFT THE DEMANDING STATE UNDER COMPULSION

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State who is charged, in the manner provided in section 23 of this act,[1] with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. 1941, July 8, P.L. 288, §5.

1. Section 191.23 of this title.

§191.6 EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING STATE AT TIME OF COMMISSION OF CRIME

The Governor of this State may also surrender on demand of the executive authority of any other state any person in this State charged in such other state in the

manner provided in section 3[1] with committing an act in this State or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom. 1941, July 8, P.L. 288, §6.

1. Section 191.3 of this title.

§191.7 ISSUE OF GOVERNOR'S WARRANT OF ARREST; ITS RECITALS

If the Governor decides that the demand should be complied with he shall sign a warrant of arrest which shall be sealed with the State seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. 1941, July 8, P.L. 288, §7.

§191.8 MANNER AND PLACE OF EXECUTION

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the State to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this act, to the duly authorized agent of the demanding state. 1941, July 8, P.L. 288, §8.

§191.9 AUTHORITY OF ARRESTING OFFICER

Every such peace officer or other person empowered to make the arrest shall have the same authority in ar-

resting the accused to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. 1941, July 8, P.L. 288, §9.

§191.10 RIGHTS OF ACCUSED PERSON; APPLICATION FOR WRIT OF HABEAS CORPUS

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody and to the said agent of the demanding state. 1941, July 8, P.L. 288, §10.

§191.11 PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTION

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last section shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than $1,000.00, or be

imprisoned not more than six months, or both. 1941, July 8, P.L. 288, §11.

§191.12 CONFINEMENT IN JAIL; WHEN NECESSARY

The officer or persons executing the Governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city or borough through which he may pass, and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: Provided, however, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State. 1941, July 8, P.L. 288, §12.

§191.13 ARREST PRIOR TO REQUISITION

Whenever any person within this State shall be charged on the oath of any credible person before any judge or magistrate of this State with the commission of any crime in any other state, and, except in cases arising under section 6,[1] with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this State, setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 6,[1] has fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation or parole and is believed to be in this State, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein wherever he may be found in this State and to bring him before the same or any other judge, magistrate or court who or which may be available in, or convenient of, access to the place where the arrest may be made to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. 1941, July 8, P.L. 288, §13.

1. Section 191.6 of this title.

§191.14 ARREST WITHOUT A WARRANT

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant

upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section,[1] and thereafter his answer shall be heard as if he had been arrested on a warrant. 1941, July 8, P.L. 288, §14.

1. Section 191.13 of this title.

§191.15 COMMITMENT TO AWAIT REQUISITION; BAIL

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except in cases arising under section 6,[1] that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused give bail as provided in the next section,[2] or until he shall be legally discharged. 1941, July 8, P.L. 288, §15.

1. Section 191.6 of this title.
2. Section 191.16 of this title.

§191.16 BAIL IN WHAT CASES; CONDITIONS OF BOND

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life

imprisonment under the laws of the state in which it was committed, a judge or magistrate in this State may admit the person arrested to bail by bond with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond and for his surrender to be arrested upon the warrant of the Governor of this State. 1941, July 8, P.L. 288, §16.

§191.17 EXTENSION OF TIME OF COMMITMENT; ADJOURNMENT

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period, not to exceed sixty days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 16,[1] but within a period not to exceed sixty days after the date of such new bond. 1941, July 8, P.L. 288, §17.

1. Section 191.16 of this title.

§191.18 FORFEITURE OF BAIL

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings [1] within this State. 1941, July 8, P.L. 288, §18.

1. Enrolled bill reads "proceedings."

§191.19 PERSONS UNDER CRIMINAL PROSECUTION IN THIS STATE AT TIME OF REQUISITION

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor in his discretion either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State. 1941, July 8, P.L. 288, §19.

§191.20 GUILT OR INNOCENCE OF ACCUSED; WHEN INQUIRED INTO

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. 1941, July, 8, P.L. 288, §20.

§191.21 GOVERNOR MAY RECALL WARRANT OR ISSUE ALIAS

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. 1941, July 8, P.L. 288, §21.

§191.22 FUGITIVES FROM THIS STATE; DUTY OF GOVERNOR

Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or

parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed. 1941, July 8, P.L. 288, §22.

§191.23 APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS

I. When the return to this State of a person charged with crime in this State is required the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial, and that the proceeding is not instituted to enforce a private claim.

II. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board or the warden of the institution or sheriff of the county from which escape was made shall present to the Governor a written application for a requisition for the return of such person in which application shall be stated the name of the

person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the Governor indicated by endorsement thereon and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction, or of the sentence, shall be filed in the office of the Secretary of the Commonwealth to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. 1941, July 8, P.L. 288, §23.

§191.24 COSTS AND EXPENSES

All costs and expenses shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. 1941, July 8, P.L. 288, §24.

§191.25 IMMUNITY FROM SERVICE OF PROCESS IN CERTAIN CIVIL ACTIONS

A person brought into this State by or after waiver of extradition based on a criminal charge shall not be subject

to service of personal process in civil actions arising out of the same facts as the criminal proceedings, to answer which he is being or has been returned, until he has been convicted in the criminal proceeding or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. 1941, July 8, P.L. 288, §25.

§191.26 WRITTEN WAIVER OF EXTRADITION PROCEEDINGS

Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 7 and 8[1] and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this State a writing which states that he consents to return to the demanding state: Provided, however, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of *habeas corpus,* as provided in section 10.[2]

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided,

1. Sections 191.7 and 191.8 of this title.
2. Section 191.10 of this title.

however, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State. 1941, July 8, P.L. 288, §26.

§191.27 NON-WAIVER BY THIS STATE

Nothing in this act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State or of its right, power or privilege to regain custody of such person by extradition proceedings, or otherwise, for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this act which result in or fail to result in extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever. 1941, July 8, P.L. 288, §27.

§191.28 NO RIGHT OF ASYLUM; NO IMMUNITY FROM OTHER CRIMINAL PROSECUTIONS WHILE IN THIS STATE

After a person has been brought back to this State by or after waiver of extradition proceedings he may be tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition. 1941, July 8, P.L. 288, §28.

§191.29 INTERPRETATION

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it. 1941, July 8, P.L. 288, §29.

§191.30 CONSTITUTIONALITY

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisons or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. 1941, July 8, P.L. 288, §30.

§191.31 SHORT TITLE

This act may be cited as the Uniform Criminal Extradition Act. 1941, July 8, P.L. 288, §32.

STATEMENT OF THE CASE

A. *Facts and Proceedings*

In June, 1977, respondent, an inmate at the State Correctional Institution at Grateford, Pennsylvania, filed a *pro se* Complaint in the United States District Court for Eastern Pennsylvania on behalf of himself and others similarly situated seeking declaratory and injunctive relief as well as monetary damages under the Civil Rights Act, 42 U.S.C. Secs. 1981, 1983 and its jurisdictional counterpart, 28 U.S.C. Secs. 1332, 1343.[1]

The Complaint named petitioners and New Jersey state officials as defendants.[2] It challenged, on constitutional grounds, respondent's proposed transfer to a New Jersey state prison pursuant to a request for temporary custody made under Article IV of the Interstate Agreement on Detainers, Pa. Stat. Ann. tit. 19, Secs. 1431 *et seq.* (Purdon 1964) p. 3 *supra* (hereinafter Agreement).[3]

Specifically, the Complaint stated that on May 3, 1977 respondent was provided with a copy of a request for temporary custody, however, he was not informed of any of his constitutional rights, among them his right to petition the governor of the sending state to disapprove the request (A15a). It alleged further that respondent and all inmates in Pennsylvania prisons were being transferred to

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1. While the Complaint sought class maintenance, the class was never certified (A13, A2-3).

2. Petitioner Cuyler is the Superintendent of a Pennsylvania state prison, petitioner Shapp is the former Governor of Pennsylvania. New Jersey defendants, among them a prosecutor, did not file a responsive pleading in District Court and did not participate in the proceedings in the Court of Appeals.

3. Respondent was wanted by the New Jersey authorities for trial on armed robbery and other charges (A47).

receiving states pursuant to the Agreement rather than the Uniform Criminal Extradition Act, Pa. Stat. Ann. tit. 19 Secs. 191.1 *et seq.* (Purdon 1964 & Supp. 1978) p. 13 *supra*, (hereinafter Extradition Act) therefore being denied a pre-transfer hearing provided by the Extradition Act (A15a, A16a). The Complaint also alleged that the New Jersey prosecutor had deliberately refrained from lodging the detainer until May 3, 1977, three months after the death of respondent's mother who was his alibi witness for the criminal charges set forth in the request for temporary custody (A17a, A18a).

Respondent premised his challenge to the interstate transfer on two theories: first, he asserted that the failure to advise the inmate of his right to petition the governor of the sending state for review of the custody request, and the absence of any pre-transfer hearing provisions constituted a violation of the Due Process Clause of the Fourteenth Amendment; second, he asserted that the failure to apply the pre-transfer hearing requirements of the Extradition Act to transfers made pursuant to Article IV of the Agreement deprived him of the equal protection of the law guaranteed by the Fourteenth Amendment.

An Answer on behalf of petitioners was filed on September 15, 1977 (A48). On October 21, 1977, the District Court filed a Memorandum of Decision and Order dismissing the Complaint for failure to state a claim upon which relief could be granted, and rejecting respondent's constitutional claims. Relying on *Frisbie v. Collins*, 342 U.S. 519 (1952), and *Meachum v. Fano*, 427 U.S. 215 (1976), the District Court held that respondent was not entitled to a pre-transfer hearing or to notice of the opportunity to petition the governor (Pet. A15a-A17a). The District Court further concluded that the state may con-

stitutionally distinguish between the transfer of an incarcerated individual pursuant to the Agreement and the extradition of a person otherwise at large transferred pursuant to the Extradition Act (*Id.* at A17a-A18a).[4]

Respondent appealed to the United States Court of Appeals for the Third Circuit. That Court found it unnecessary to reach the constitutional issues raised. Instead, the Court held, as a matter of statutory construction, that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights under Section 10 of the Extradition Act (Pet. A7a, A13a). The Court of Appeals therefore vacated the order of the District Court and remanded for further proceedings consistent with the opinion (Pet. A13a).

B. *Statutory Scheme*

The interstate transfer of individuals charged with crimes in sister states is so fundamental that it is treated in Article IV, Section 2, Clause 2 of the United States Constitution which provides that:

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4. Although in its opinion of October 21, 1977 (Pet. A14a) the District Court assumed that respondent had already been transferred to New Jersey, records now available to the parties show that he was not, in fact, transferred until January, 1978. In July, 1977, Mr. Adams, then represented by a public defender filed a Petition for a Writ of Prohibition in state court, seeking to enjoin petitioner Cuyler from transferring him without benefit of an Extradition Act hearing. On September 26, 1977, a judge of the state court ordered petitioner Cuyler to refrain from transferring Mr. Adams to New Jersey authorities. On December 21, 1977, another judge of the same court entered an order by agreement of counsel directing that the order of September 26, 1977 be vacated and authorizing petitioner Cuyler to release Mr. Adams to the New Jersey authorities under the terms of the Agreement. Present counsel for both petitioners and respondent were unaware of the state court proceedings until April 15, 1980.

> A person charged in any State with Treason, Felony or other Crime, who shall flee from Justice and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime.

Effectuation of this constitutional mandate is assured by the Federal Extradition Statute, 18 U.S.C. Sec. 3182 which provides the minimum prerequisites for delivery of a fugitive by an asylum state to the demanding state. Most states have implemented more specific legislation such as the Uniform Criminal Extradition Act, which was enacted in Pennsylvania in 1941.[5]

The Extradition Act provides a detailed procedure to be followed in transferring individuals sought for trial by another state. Section 2 provides that the Governor of Pennsylvania shall deliver to the agent of the demanding State "any person . . . who has fled from justice and is found in this State." (p. 14 *supra*). Section 3 of the Act states that the demand must be in writing, and ordinarily must allege that the accused was in the demanding state at the time of the crime. Furthermore, the demand must be accompanied by an indictment (or information or affidavit made before a magistrate) that substantially charges the accused with a crime under state law and which has been authenticated by an executive authority of the demanding state (p. 15 *supra*). Section 4 provides that the executive in the asylum state may, at his discretion, make an independent investigation of the circumstances underlying the request for extradition (p. 15-16 *supra*). When the executive determines that the demand will be honored he

5. The Extradition Act has been adopted by all the states except South Carolina. 11 U. L. A. p. 10 (1980 Supp.)

signs an arrest warrant as provided in Section 7 of the Act (p. 17 *supra*). Section 10 of the Extradition Act provides that after the accused has been arrested but before he may be turned over to the authorities of the requesting state, he must be taken before a judge in the asylum state and informed of (1) the demand which has been made for his surrender; (2) the crime with which he is charged; and (3) the right to demand and procure legal counsel. If the accused indicates that he wants to test the legality of his arrest, the judge must set a reasonable time within which he may challenge the extradition by writ of habeas corpus (p. 18, *supra*).[6]

While the Extradition Act is designed to govern the extradition of all fugitives in the asylum state (Section 2), the Act also specifically provides for the transfer of a person already imprisoned in the asylum state. Section 5 of the Extradition Act empowers the Governor of Pennsylvania to agree with the executive of the asylum state for the extradition of a prisoner before the conclusion of criminal proceedings or his term of sentence in the asylum state, upon condition that such person be returned to the asylum state as soon as prosecution in Pennsylvania is completed (p. 16 *supra*). Extradition of a prisoner is not mandatory,

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6. At a hearing on a writ of habeas corpus, the court may not inquire into the guilt or innocence of the accused (Sec. 20, Pet. A41a). In fact, this Court in *Michigan v. Doran*, — U.S. —, 99 S. Ct. 530, 535 (1978), held that the scope of review in a habeas corpus hearing challenging extradition is limited in the following fashion:

> Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

however, since Section 19 provides that the executive of the asylum state has the discretion to keep custody of a prisoner until he has been tried, convicted and discharged from prison (p. 23 *supra*).

The absence of a mechanism specifically designed to efficiently transfer prisoners under the Extradition Act prevented many prisoners from being expeditiously tried on outstanding charges in other states. The problems which untried detainers[7] of long duration caused both the inmate and those charged with his rehabilitation are well documented by the Court of Appeals for the Second Circuit:

> The Detainers Act was originally drafted in response to a variety of problems arising out of the then unregulated system of detainers commonly used where one or more jurisdictions had charges outstanding against a prisoner held by another jurisdiction.
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> . . .
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> . . . Prison authorities often accorded detainers considerable weight in making decisions with respect to the terms and conditions of the prisoner's incarceration and release on parole. Sometimes the prisoner would automatically be held under maximum security. Sometimes he would be ineligible for special work programs, athletic programs, release for visits to relatives'

7. In R. Singer and W. Statsky, *Rights of the Imprisoned*, 825 (1974), the authors note that there are three kinds of detainers:

> (1) [T]hose which reflect an unresolved criminal charge against the prisoner; (2) those which reflect that, prior to his incarceration, the prisoner had been sentenced for another crime which has yet to be served; (3) probation or parole "warrants," seeking to resolve the question of whether such conditional liberty as the prisoner had prior to this present criminal charge should be revoked.

The Agreement applies only to the first class of detainers.

> death beds or funerals, or special minimum security facilities. Often detainers precluded the granting of parole. Despite these serious consequences, virtually any law enforcement officer—prosecutor, policeman, or judge—could file a detainer without any procedural prerequisites. No pending indictment or other formal notification of charges was generally required.
>
> . . .
>
> Thus detainers imposed major unjustifiable hardships on prisoners, and, prior to adoption of the Agreement on Detainers, there was nothing a prisoner could do about them.
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> . . .
>
> Instead of permitting coordination of sentencing and rehabilitation, the old detainer system often inhibited fair sentencing and effective rehabilitation.
>
> . . .
>
> The system also tended to eliminate the possibility of concurrent sentencing, even when the charges in the various jurisdictions all stemmed out of the same criminal episode or occurred within a short period of time.

United States v. Ford, 550 F.2d 732, 737-40 (2d Cir. 1977) *aff'd sub nom. United States v. Mauro*, — U.S. —; 98 S. Ct. 1834 (1978).

To remedy some of these problems, Pennsylvania enacted the Interstate Agreement on Detainers in 1959.[8] In *United States v. Mauro, supra*, at 1841-42, this Court traced the origin of the Agreement and pointed to language in Article I for the policy considerations which

8. The Interstate Agreement on Detainers has been adopted by forty-eight states, the United States and the District of Columbia. 11 U. L. A. p. 68 (1980 Supp.)

motivated this legislation and the purposes which it was designed to accomplish. Article I provides:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedure. It is the further purpose of this agreement to provide such cooperative procedures.

To achieve the goals enunciated in this policy statement, the drafters of the Agreement set out specific and detailed procedures to be followed by prisoners, correctional staff and prosecutors when a detainer was lodged against an inmate. Either the inmate (Article III) or the prosecutor (Article IV) may initiate the procedures which culminate in the prompt trial of open charges.

Article III of the Agreement confers significant rights upon a prisoner who has a detainer lodged against him: (1) he must be notified of the source and content of such a detainer (Sec. (c), p. 5 *supra*); (2) he must be informed of his right to make a request for final disposition of the indictment, information or complaint upon which the detainer is based *Id;* (3) if the prisoner requests final disposition, he must be brought to trial within one hundred eighty

(180) days after his written request, and such a request operates as a demand for final disposition of *all* untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner by the receiving state (Sec. (a) & (d), p. 4-6 *supra*); (4) failure of the authorities in the receiving state to begin trial within one hundred eighty (180) days, unless excused for good cause, results in the dismissal of *all* untried charges (Sec. (d), p. 6 *supra*); (5) the request for final disposition of charges upon which a detainer is based is deemed to be a waiver of all extradition proceedings as to all untried charges and as to any sentence that is imposed on the prisoner in the receiving state, and that must be served after completion of his sentence in the sending state (Sec. (e), *Id.*).

Article IV of the Agreement specifies the procedure to be followed when a prosecutor in the receiving state who has lodged a detainer against a prisoner in another state wishes to secure a prisoner's presence for trial. In order to perfect such an interstate transfer, the Agreement provides: (1) the prosecutor must present to the appropriate authorities in the sending state a written request for temporary custody, which request must have been "approved, recorded and transmitted" by the trial court in the receiving state (Sec. (a), p. 7 *supra*); (2) a mandatory thirty (30) day waiting period must elapse following the request for temporary custody during which "the governor of the sending state may disapprove the request . . . either on his own motion or upon motion of the prisoner." (*Id.*); (3) if the prisoner is transferred to the receiving state, trial must begin within one hundred twenty (120) days after the date of transfer, unless a continuance is granted for good cause, on *all* charges which had been the subject of detainers from the receiving state, otherwise the receiving court is authorized to dismiss all untried charges (Sec. (c) & (e), p. 8 *supra*).

ARGUMENT

I. The Court of Appeals for the Third Circuit erred in the statutory construction of Article IV of the Interstate Agreement on Detainers when it held that prisoners transferred from one state to another for trial on criminal charges must be given a hearing as provided in the Uniform Extradition Act.

A. *The Court of Appeals' interpretation of Article IV goes against the clear and literal meaning of the statute*

This case presented the Court of Appeals for the Third Circuit with the issue of whether a prisoner who is transferred between states under the Agreement is entitled to the pre-transfer procedural protections available to a person arrested and extradited under the Extradition Act. The Court of Appeals for the Third Circuit held that prisoners may be transferred under Article IV of the Agreement only after being given the opportunity for a hearing as provided in the Extradition Act, Section 10 (Pet. A13a). The holding was based on the statutory construction of the Agreement rather than on the constitutional arguments urged by respondent.

In reaching its conclusion the Court of Appeals examined the language of Article IV(d) of the Agreement and found that it implied Extradition Act procedures. Article IV(d) reads:

> *Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof,* but such delivery may not be opposed or denied on the ground that the executive

> authority of the sending state has not affirmatively consented to or ordered such delivery. (emphasis supplied)

Read literally, Article IV(d) means that a prisoner has only the rights afforded by Article IV(a), that is, the right to petition the governor. The only two other courts that have interpreted Article IV(d) of the Agreement have applied this reading.

In analyzing precisely the same issue of statutory construction presented here, the Court of Appeals for the Fifth Circuit focused on Article IV(a) and (d) and concluded that the language of these two paragraphs did not imply that a pre-transfer hearing was required. *Atkinson v. Hanberry,* 589 F.2d 917, 919 (5th Cir. 1979). A New Jersey intermediate appellate court in *State v. Thompson,* 133 N.J. Super. 180 at 185, 336 A.2d 11 (1975) adopted the same interpretation, stating:

> We construe the phrase "to contest the legality of his delivery as provided in paragraph (a) hereof" to mean that within thirty (30) days after receipt by the appropriate authority in the sending state of the written request by the receiving state for temporary custody of the prisoner, the prisoner may move before the Governor of the sending state to disapprove the request.

This interpretation of Article IV(d) is persuasive because it gives meaning to the clear words of the drafters. The reading by the Court of Appeals for the Third Circuit excises the clause "as provided in paragraph (a) hereof . . ." in clear contradiction of its avowal to follow the teachings of the Court in *Montclair v. Ramsdell,* 107

U.S. 147, 152 (1882) and "give effect, if possible, to every clause and word in a statute" (Pet. A9a). Article IV(a) contains nothing to which this clause could refer other than the right to request the sending governor to disapprove the request.

To avoid the apparent meaning of Article IV(d), the Court of Appeals followed several lines of reasoning. The Court pointed to language in Article III(e) to the effect that the prisoner who requests a transfer waives extradition, and stated that "[T]he Extradition Act remained in effect after adoption of the Agreement, but when a prisoner chooses to claim the benefits of Article III, he must give up the procedural safeguards of the Extradition Act" (Pet. A7a).[9] The Court reasoned that because Article IV contains no waiver of extradition language, all of the rights provided by the Extradition Act are made applicable under the Agreement by Article IV(d) (except for the affirmative consent of the sending governor) (Pet. A7a). The logic of this rationale is flawed by a basis misconception: Article III(e) speaks of *extradition*, not of Ex-

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9. Article III(e) of the Agreement provides:

> Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purpose of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

tradition Act procedures. In *Terlinden v. Ames*, 184 U.S. 270 (1902) the Court stated at page 289:

> Extradition may be sufficiently defined to be the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands his surrender.

It should be obvious that the use of the term *extradition* in the Agreement does not imply the operation of Extradition Act procedures. Rather, the Agreement itself specifies the procedure to contest the prisoner's delivery, *i.e.* a petition to the governor.

Similarly, the Court of Appeals' reliance on the explanatory note on the Agreement in the Council of State Governments, *Suggested State Legislation, Program for 1957*, 78-79 (1956), is based on the assumption that the term "extradition" means the panoply of procedural rights provided in the Extradition Act. The explanatory note does not bolster this assumption since it does not define *extradition* in this way. What the explanatory note does is to explain how Article IV(a) and (d) together protect whatever extradition rights the prisoner has without reading into the Agreement provisions from other statutes. If the drafters of the Agreement wished to superimpose Extradition Act procedures on the Agreement, they could have done so by one simple reference to that effect.

A review of the Agreement materials in the handbook prepared by the Council of State Governments nowhere suggests that a prisoner transferred under the Agreement is entitled to formal extradition proceedings, despite the

fact that detailed instructions for the implementation of the Agreement are provided for the benefit of prosecutors and wardens. See Council of State Governments, *The Handbook on Interstate Crime Control,* 91-116 (rev. ed. 1966).

Furthermore, an examination of the explicit procedural directions contained in the Agreement, as well as the specific directions which accompany the forms used by the states to implement the provisions of the Agreement,[10] strongly militate against the assumption that Extradition Act proceedings were intended but never specifically mentioned by the drafters of the Agreement. The Agreement is detailed and explicit. It was intended to be complete on its face. Under these circumstances, the Court of Appeals' inclusion of procedures under the Extradition Act is unreasonable.

B. *The Court of Appeals' reliance on Legislative history is misplaced since the statutory language is unambiguous and its literal interpretation effectuates the purpose of the statute*

General rules of statutory construction dictate that generally there are two circumstances when a court may look beyond the express language of the statute: (1) where the statutory language is ambiguous, and (2) where a literal interpretation would defeat the purpose of the statutory scheme or lead to an absurd result. *United States*

10. Both New Jersey and Pennsylvania have adopted the rules, regulations and forms drafted by the Council of State Governments to implement the provisions of the Agreement. These appear on p. 100-114 of the Council's *Handbook on Interstate Crime Control, supra.*

v. Oregon, 366 U.S. 643, 648 (1961); *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953); *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543-44 (1940). Neither of these circumstances is present here; the words of the Agreement are unequivocal and the literal interpretation intended by the legislature furthers the basic purpose of the Agreement which is "to encourage the expeditious and orderly disposition of charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." Art. I, p. 3 *supra*.

An understanding of the role the Agreement is intended to play in the administration of justice in America can be gleaned from the following passage from a recent opinion of this Court:

> Prior to the Agreement, there were several means by which States could obtain prisoners from other jurisdictions, none of which was entirely satisfactory. The traditional method was the use of formal extradition proceedings. This required a request for the prisoner by the Governor to the receiving State. It was sent to the Governor of the State that had custody of the prisoner, and he was permitted to investigate the situation to determine if the prisoner should be surrendered. If the Governor agreed to the extradition, he issued an arrest warrant against the prisoner, who was then permitted to challenge the legality of his arrest.
>
> Rather than going through this formal procedure some States entered into special contracts controlling the transfer of prisoners. The effort involved in arriving at such a contract, however, was often thought to outweigh the benefit of the simplified procedures unless there were frequent prisoner transfers between two States.

> Because of problems with both of these methods, law enforcement authorities developed the informal practice of filing detainers against the prisoners; rather than seeking immediate transfer, the State would merely notify the State having custody of the prisoner that he was wanted at the completion of his sentence. This practice led to various problems, discussed in the text and n.25, *infra,* that the Agreement sought to overcome. The Agreement also provided States with a simple and efficient means of obtaining prisoners from other States. *United States v. Mauro,* 98 S.Ct. 1834; at 1844 n.23 (1978).

The decision of the Court of Appeals here defeats one of the basic purposes of the Agreement by superimposing the cumbersome Extradition Act proceedings on the simplified procedures of the Agreement.[11]

C. *The Court of Appeals erroneously relied on the provisions of a general statute to defeat the controlling provisions of a specific statute*

In the context of Pennsylvania's statutory scheme, the Extradition Act is a general statute which authorizes the state to extradite "any person," (Section 2) providing, however, that in the case of incarcerated individuals (Section 5) an agreement could be consummated by the executive

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11. Section 5 of the Extradition Act empowers the executive authority of the state "to agree" with the other states for the transfer of prisoners who are serving a sentence in the asylum state. The Interstate Agreement on Detainers is a special contract and directly in response to the authorization contained in this section. Section 5 does not specify what form the Agreement should take, neither does it detail what procedural safeguards should be included. Therefore, rather than superimposing Extradition Act procedures on the Agreement, the more reasonable construction of the two statutes would be that the Agreement is the means of transfer envisioned by Section five of the Extradition Act.

authority of the state to provide for the extradition of prisoners. The Agreement, enacted in Pennsylvania eighteen years later, focuses on prisoners and specifically provides a simpler procedure for the disposition of outstanding detainers based on untried indictments, informations or complaints.

Courts have long relied on the principle of statutory construction which "gives precedence to the terms of the more specific statute where a general statute and a specific statute speak to the same concern, even if the general provision was enacted later." *Simpson v. United States*, 435 U.S. 6, 15, (1978). The general language of a statute "will not be held to apply to a matter specifically dealt with in another part of the same enactment . . . Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932). In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), this Court held that habeas corpus provides the exclusive federal remedy for prisoners attacking the fact or duration of their confinement. Consequently, it did not permit a Section 1983 attack in an action in which habeas corpus would lie. The Court concluded that despite the broad language and general applicability of Section 1983, a prisoner challenging his underlying conviction must seek relief from the more specifically applicable federal habeas corpus statute. Guided by these principles, the Court must conclude that although the Extradition Act's broad reach once embraced the respondent here, the specific terms of the Agreement now control the interstate transfer of prisoners who have detainers lodged against them.

D. *The effects of the decision of the Court of Appeals are clearly contrary to the purpose of both the Extradition Act and the Agreement*

The central provisions of the Agreement are found in Articles III and IV. The decision of the Third Circuit in this case has radically changed the character and impact of Article IV, by grafting unto it procedural requirements which were never contemplated by the drafters and which produce some anomalous results when applied.

The statutory scheme which results from the interaction of the Extradition Act and the Agreement as construed by the Third Circuit grants greater procedural safeguards to an incarcerated prisoner than to a free individual when each is sought for trial in another state. A member of the public who is sought for trial under the Extradition Act first learns of this fact when he is arrested on a governor's warrant, and he does not have the opportunity to petition the governor of the asylum state to oppose his extradition. Neither does he have the advantage of having *all* outstanding charges in the receiving state tried within 120 days. On the other hand, the prisoner learns of the charges outstanding against him when a detainer is first lodged, and when a request for temporary custody is made he has thirty days to petition the governor to disapprove the request.

The Agreement policy of swift disposition of detainers is subverted by the decision of the Third Circuit. Before a prisoner can be brought before a court of record for an extradition type hearing, the thirty day period provided in the Agreement must elapse since it is not until this period of time has elapsed that it is known whether or not the governor of the asylum state will, *sua sponte*, disapprove

the request and therefore eliminate the need for any hearing at all. The thirty day period under the Agreement, plus the time required to bring the inmates before a court of record, plus the "reasonable time" which the Extradition Act grants an individual to apply for a writ of habeas corpus operate to cause the type of delays which the Agreement was designed to avoid.

Simply stated, the effect of this decision is that while a free citizen sought for extradition is entitled only to the procedural protections of the Extradition Act, a prisoner who has a detainer lodged against him enjoys the procedural safeguards under both statutes. The Agreement was designed to solve problems created for the prisoner and society by the abuses which outstanding detainers of long duration caused. It provides a simple, expeditious procedure which gives prisoners greater benefits than under the Extradition Act. The decision of the Court of Appeals violates the clear intent of the Agreement and defeats its purpose by encumbering it with the procedural require,-ments of another statute.

II. The interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers does not infringe upon any interest protected by the due process clause of the Fourteenth Amendment.

Respondent challenges his interstate transfer alleging that his Fourteenth Amendment rights were violated because the Agreement which authorized the transfer did not require notification to him of his right to petition the governor to disapprove the transfer and did not require a pre-

transfer hearing.[12] The issue presented by respondent's claim is whether he had any rights protected by the Fourteenth Amendment. The Court of Appeals did not reach this issue.

A. *Respondent does not have any constitutionally protected extradition rights*

Respondent appears to claim that he has constitutional rights which attach to extradition, and that these rights include the procedures of the Extradition Act. The Extradition Act under which respondent asserts his rights details procedures to be applied when extradition is sought. However, such rights are statutory creations and not constitutionally based.

The constitutional provision for extradition is a right granted to the state, not to the fugitive. In *Lascelles v. Georgia,* 148 U.S. 537, 542 (1893) the Supreme Court said:

> The sole object of the provision of the Constitution [Article IV, Sec. 2] and the act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of a State, whose laws they are charged with violating. Neither the Constitution, nor the act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by

12. From I set forth at p. 101 of the *Handbook,* n. 10 *supra,* is given to the inmate when a detainer on an untried indictment, information or complaint is lodged. It advises him of the source of the detainer, specifies the charges and recites his right to initiate final disposition procedures under Article III. At this time, he is also advised that the prosecutor may request temporary custody to try him on the charges and that he has a right to petition the governor to disapprove such a request.

The record in this case does not disclose when the detainer was first lodged against respondent.

> implication, any right or privilege upon such fugitives . . . [or] exemption from trial for any criminal act done therein.

Whatever benefits respondent may be entitled to under the Extradition Act, denial of such benefits does not deprive him of any federally protected right. *Frisbie v. Collins, supra; Pettibone v. Nichols,* 203 U.S. 192 (1906); *Munsey v. Clough,* 196 U.S. 364 (1905). In *Frisbie,* the Supreme Court stated:

> [D]ue process is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will. At 522.

In *Ponzi v. Fessenden,* 258 U.S. 254, 260 (1922), the Court held that the extradition process is a right of the sovereign state; therefore, the state may by statute assert its right to protect its own citizens from unjust criminal actions that may be brought by another state.

It is apparent, therefore, that respondent has no constitutionally protected extradition rights, and that any extradition rights which he has must be statutorily based.

B. *The Interstate transfer of a prisoner does not infringe a "liberty" interest protected by the due process clause*

In *Meachum v. Fano, supra;* and *Montanye v. Haymes,* 427 U.S. 236 (1976), the Court examined the question of whether a hearing was constitutionally required prior to

the transfer of inmates from one prison to another within the state. Beginning its analysis by asking whether a liberty interest within the meaning of the Due Process Clause was implicated in such a transfer, the Court stated in *Meachum:*

> We reject at the outset the notion that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause. *Id.* 223
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> * * *
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> Similarly, we cannot agree that any change in the conditions of confinement having a substantial adverse impact on the prisoner involved is sufficient to invoke the protections of the Due Process Clause. *Id.*

The Court concluded that a convicted prisoner's liberty interest has been "sufficiently extinguished" to permit a state to confine him in any of its institutions and to transfer him from one institution to another within the prison system. *Id.* 224-25. Therefore, the Court held that no liberty interest of a convicted inmate is infringed when he is transferred from one prison to another within the state without a hearing, absent some right or justifiable expectation rooted in state law that he will not be transferred except for misbehavior or upon the occurrence of specified events. *Id.* 224-228. The Court looked for the existence of any state-created liberty interest which might be violated by the transfer from a medium security prison to a maximum security prison in Massachusetts but found that state law did not confer any right to the prisoner to remain in any particular prison. *Id.* at 226-227.

Although in *Meachum* and *Montanye, supra,* the Court dealt with intrastate transfers, the holding in these cases is equally applicable to interstate transfers since it is the na-

ture of the interest rather than its weight which determines whether the due process clause is implicated. The nature of a prisoner's liberty interest does not change simply because he crosses a state's boundary. Two circuit courts of appeals have followed this reasoning. In *Sisbarro v. Warden, Massachusetts State Penitentiary,* 592 F.2d 1 (1st Cir. 1979) the Court of Appeals for the First Circuit relied on the "liberty" interest analysis of *Meachum* and *Montanye, supra,* and concluded that since "the burden of disadvantage to the prisoner is no longer the test, there is no distinction between interstate and intrastate transfers." at p. 3. Turning to the law of the state in which the prisoner was initially confined, the Court of Appeals found no right or expectation that he would not be transferred.[13] The Court of Appeals therefore held that the prisoner's due process rights were not implicated. The Court of Appeals for the Fifth Circuit has also considered the applicability of the *Meachum* holding, *supra,* to the interstate transfer[14] of prisoners and stated:

> We think this holding applies to a federal prisoner seeking protection under the Due Process Clause of the Fifth Amendment. The hardships that Atkinson claims he will suffer by reason of his transfer to Ohio —absence and possible loss of his job at Atlanta Peni-

13. The prisoner transfer here was made from Massachusetts to Connecticut pursuant to the New England Interstate Corrections Compact, M.G.L. c. 125, App. Secs. 1-1-1-3. The purpose of the compact was "the mutual development and execution of . . . programs for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." *Sisbarro* at 3.

14. The transfer from the United States Penitentiary in Georgia to the State of Ohio was made pursuant to the Agreement, to which both the United States and Ohio are signatories. 18 U.S.C.A. App. (1976); and R.C. Secs. 2963.30 *et seq.*

> tentiary—is no greater than that suffered by the state prisoners in *Meachum* and *Montanye*. Moreover, just as the state prisoners in those cases had no substantial expectation that they would not be transferred, here no federal law creates a right or expectation for a federal prisoner to avoid transfer to state authorities to stand trial on state charges. *Atkinson v. Hanberry*, 589 F.2d 917, 920 (1979).

Similarly, in the case before this Court respondent can point to no right or expectation rooted in state law which would permit him to avoid transfer to another state. On the contrary, the provisions of both the Extradition Act and the Agreement create the expectation that such a transfer could be initiated by the state (Extradition Act Section 5; Agreement, Article IV).

The Court should follow *Meachum*, *Sisbarro* and *Atkinson*, *supra*, and hold that the Fourteenth Amendment does not require a pre-transfer hearing when a prisoner is transferred from one state to another.

III. The interstate transfer of a sentenced prisoner pursuant to the provisions of the Interstate Agreement on Detainers rather than the Uniform Criminal Extradition Act does not violate the equal protection clause of the Fourteenth Amendment.

Respondent complains that he has been deprived of the equal protection of the law because by being transferred under the Agreement he is deprived of the procedural protections afforded to those individuals who are extradited pursuant to the Extradition Act (A15a). Respondent goes on to state that all prison authorities in

Pennsylvania transfer prisoners under the Agreement ignoring the rights provided under the Extradition Act (A16a, par. 15, 16; 19a, par. 24; 30a, par. 9). The Court of Appeals did not deal with this issue.

A. *The protection of procedural rights are substantially similar under both the Extradition Act and the Agreement*

The Extradition Act is primarily designed for the extradition of persons at large in the asylum state while the Agreement is specifically intended for the interstate transfer of convicted and incarcerated prisoners who have detainers lodged against them. A detailed comparison of the procedural protection afforded under the Extradition Act and the Agreement was set forth by the Court in *Commonwealth ex rel. Coleman v. Cuyler*, 396 A.2d 394, 401 (1978):

> Although the procedure for extraditing a person is not identical under the Detainers Agreement and the Extradition Act, the two acts provide substantially the same protections. The Extradition Act requires that a person to be extradited from Pennsylvania to any other state be taken before a Pennsylvania court of record, where the person must be informed of the demand for his surrender, the crime with which he is charged in the demanding state, and the right "to demand and procure legal counsel." The Act does not require that the person be informed of anything prior to being taken before the court. On the other hand, the Detainers Agreement provides that the appropriate court of the demanding state must approve the written request for the prisoner's surrender, and

must submit the request to the appropriate Pennsylvania authorities, who are required by the Agreement to notify the prisoner of the source and contents of the detainer and of the prisoner's right to demand a speedy disposition of the charges. An automatic thirty day waiting period then goes into effect, during which time the prisoner may not be surrendered to the demanding state. Although the Extradition Act requires the person's appearance in court, it does not provide him with the right to counsel at that time, and if the person does not speak up to challenge his extradition in some way (for example, to say that he is not the person named in the demand for extradition), then he will promptly be delivered to the demanding state without a further hearing. If the prisoner indicates that he desires to challenge the proceedings, he will be given "a reasonable time" in which to apply for a writ of habeas corpus, although the Act does not require specific notice of the availability of the writ. Overall, it can hardly be said that the Extradition Act provides greater protection for a prisoner than does the Detainers Agreement. Although procedure is different under the two acts, the protection of the prisoner's rights are substantially similar; we therefore find no equal protection violation in the application of the Detainers Agreement as compared to the Extradition Act.

Similarly, in *Wertheimer v. State,* 294 Minn. 293, 201 N.W.2d 383 (1972), the Court found a difference in the procedure under the two statutes but did not find the difference so "fundamentally unfair" as to deprive the prisoners of equal protection and due process. At 386.

B. ***Differences in the procedure under the Extradition Act and the Agreement are rationally based***

In determining whether a statutory scheme offends the Equal Protection Clause the standard of inquiry is whether the laws being attacked are rationally based and free from invidious discrimination. *Hagans v. Lavine,* 415 U.S. 528, 538 (1974). The record in this case indicates that all inmates in Pennsylvania are being transferred pursuant to the provisions of the Agreement, therefore, the only classes being created by the interaction of the two statutes in question are prisoners and individuals at large. In *Wertheimer, supra,* a prisoner who was transferred pursuant to the Agreement contended that the state had refused him a pre-transfer hearing under the Extradition Act because of his status as a prisoner and therefore violated his rights to equal protection and due process. The court, in commenting on the different extradition procedure which Minnesota has formulated for its prisoners and its ordinary citizens stated:

> We cannot agree that such a classification is per se arbitrary and unreasonable. A prisoner is in a situation completely different from that of the ordinary citizen whose freedom is unrestricted. By being called upon to defend against a charge in another jurisdiction, a prisoner suffers no additional restriction on his freedom; he continues to gain credit for time served while in the temporary custody of the foreign jurisdiction. The average citizen, however, faces a far different situation. His freedom of movement . . . is brought to an end. He is removed from his community, family, friends, and job under conditions which may permanently cloud his reputation, and as such, his need for protection from extradition on spurious

charges is far greater than that of the prisoner, at 385-386.

On the basis on this analysis the court concluded that there was no denial of equal protection.

In *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409 (1975), plaintiff complained that the arbitrary decision of state officials in transferring prisoners pursuant to the Agreement as opposed to the Extradition Act resulted in according prisoners different procedural rights. The court examined the legislative purpose for the two statutes and determined that one applied to the general public and one to prisoners. Finding that the procedural distinctions in the statutes do have relevance to their purpose, the court held that legislative classifications "do not offend the equal protection clause because of some inequalities which may arise as a result of their practical application," at 415.

Every state court which has analyzed the equal protection claim in the context presented by this record has held (1) that the procedural safeguards under the two statutes are substantially similar and hence not violative of equal protection,[15] (2) that the difference in procedure used for the transfer of prisoners versus that used for a free individual is rationally based;[16] or (3) both.[17]

Those jurisdictions which have found an equal protection violation in the context of interstate prisoner transfer under the Agreement are distinguishable because in each case the two classes they analyzed were composed

15. *Commonwealth ex rel. Coleman v. Cuyler,* 396 A.2d 394, 401 (1978); *Hystad v. Rhay,* 12 Wash. App. 872, 533 P.2d 409, 416 (1975).

16. *State v. Thompson,* 133 N.J. Super. 180, 187, 336 A.2d 11 (1975).

17. *Wertheimer v. State,* 294 Minn. 293, 201 N.W.2d 383, 386 (1972).

of (1) those prisoners transferred under the Extradition Act and (2) those prisoners transferred under the Agreement.[18] Here, the record is clear that the two classes being treated in a different fashion are (1) all prisoners on one hand and (2) the general public on the other.

In assessing the validity of the classification created by the Agreement, the basic purpose for its adoption and enactment must be emphasized. The state has an intense interest in both the rehabilitation of its prison population and the efficient administration of its criminal justice system. To accomplish these ends, the legislature enacted the Agreement.

The resulting differences in treatment of the prisoner class as opposed to the general public are grounded on reasonable bases. The Court should therefore hold that any differences in treatment afforded to prisoners as opposed to members of the general public are rationally based and therefore not offensive to the Equal Protection Clause.

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18. In *McQueen v. Wyrick*, 543 S.W.2d 778 (1976); *Moen v. Wilson*, 189 Colo. 85, 536 P.2d 1129 (1975); and *State ex rel. Garner v. Gray*, 55 Wis.2d 574, 201 N.W.2d 163 (1972); the Supreme Courts of Missouri, Colorado and Wisconsin found a denial of equal protection because the record reflected that the state could and did arbitrarily decide whether to transfer a prisoner under the Extradition Act or the Agreement, the inequality therefore arose in treating prisoners in dissimilar fashion.

The decision of this Court in *Mauro, supra*, has established as law that once a detainer has been lodged against a prisoner, by a state party to the Agreement, any transfer of that prisoner for the purposes of trial on the underlying charges triggers the procedural protection of the Agreement. Therefore, the arbitrary choice of statute which has been ascribed to state officials in these cases is no longer possible.

CONCLUSION

On the basis of the foregoing arguments and authorities, petitioners respectfully suggest that the decision of the Court of Appeals be reversed and judgment entered in favor of petitioners.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,
Petitioners,

v.

JOHN ADAMS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT

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CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION
ARTICLE I, SECTION 10, CLAUSE 3

No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State . . . .

QUESTIONS PRESENTED

I. Did the Court of Appeals correctly hold that Article IV of the Interstate Agreement on Detainers, as evidenced by the language of the Agreement and its explicit legislative history, requires that prisoners transferred pursuant to Article IV of the Agreement be granted the same procedural safeguards afforded persons transferred under the Uniform Criminal Extradition Act?

II. If the Interstate Agreement on Detainers does not provide Extradition Act safeguards, does it violate the due process clause of the fourteenth amendment by its failure to provide prisoners minimal notice and hearing before their transfer to prisons in another state?

III. If the Interstate Compact on Detainers does not provide Extradition Act safeguards, does interstate transfer of prisoners under the Agreement violate the equal protection clause, since persons transferred under the Extradition Act, including prisoners, are entitled to procedural safeguards denied to prisoners transferred under the Detainer Agreement?

STATEMENT OF THE CASE

Procedural History

On June 22, 1977, respondent John Adams ("Adams"), on behalf of himself and all others similarly situated, commenced a civil rights action in the United States District Court for the Eastern District of Pennsylvania against various Pennsylvania and New Jersey authorities, individually and in their official capacities.[1] In the pro se Complaint (A. 12a-22a),[2] damages, a declaratory judgment, and injunctive relief are sought on the ground that Adams' transfer from Pennsylvania to New Jersey, and the transfers of other persons pursuant to the Interstate Agreement on Detainers Act, 19 P. S. § 1431 *et seq.* ("Detainer Agreement"),[3] violate the fourteenth amendment of the United States Constitution because: (1) notice and a hearing were not provided before the transfers, in violation of the due process clause; (2) the only procedure for challenging the transfers—motion to the governor for disapproval—does not satisfy due process requirements because the prisoners were not advised of their rights to make such a motion; and (3) Adams and others transferred under the Detainer Agreement are denied equal protection of the law, because others similarly situated may be transferred with adequate procedural safeguards

1. The defendants include the Governors of Pennsylvania and New Jersey, Milton Shapp and Brendan Byrne; the Superintendent of the State Correctional Institution at Graterford, Pennsylvania, Julius T. Cuyler; the Prosecutor of Camden County, New Jersey, Thomas J. Shusted; and two Camden County detectives whose identities are not known to Adams.

2. References to "A." are to the pages of the Appendix in the Supreme Court.

3. The Detainer Agreement is reproduced in the Appendix for Writ of Certiorari at 20a-31a. References to "Pet. A." are to the pages of the Appendix to the Petition for Writ of Certiorari.

under the Uniform Criminal Extradition Act, 19 P. S. § 191.1 *et seq.* ("Extradition Act").[4]

On September 15, 1977, an Answer was filed on behalf of defendants Shapp and Cuyler, asserting *inter alia* failure to state a claim upon which relief can be granted. (A. 48a-52a). Answers have never been filed for any of the other defendants.

On October 21, 1977, Judge McGlynn summarily dismissed the Complaint for failure to state a claim upon which relief could be granted, and filed a memorandum of decision in support of the dismissal. 441 F. Supp. 556 (E. D. Pa. 1977) (Pet. A. 14a-19a).[5] The court did not in any way attempt to determine the truth of Adams' allegations and did not consider certification of the case as a class action. *Id.*

Thereafter, on December 9, 1977, Adams filed a Notice of Appeal from the district court's order. In the United States Court of Appeals for the Third Circuit, unlike the court below, counsel was appointed to represent Adams. In a carefully considered opinion, the court of appeals held that, as a matter of statutory construction, Article IV(d) of the Detainer Agreement requires that the rights granted to inmates under the Extradition Act, including the right to a pre-transfer hearing, be afforded to inmates transferred pursuant to the Detainer Agreement. 592 F. 2d 720 (3d Cir. 1979) (Pet. A. 1a-13a). This ruling was based on the language of the Detainer Agreement and the Council on State Governments' interpretation of this statute.

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4. The Extradition Act is reproduced at Pet. A. 32a-46a.

5. This action was taken even though none of the defendants filed a motion to dismiss to which Adams could respond, and Adams was not afforded an opportunity to brief or otherwise respond to the issues raised in the Answer filed by defendants Shapp and Cuyler. The court did not appoint counsel to represent Adams, or permit the filing of an amended complaint. Moreover, the action was dismissed on behalf of defendants who did not even answer.

Because Congress had not only sanctioned the Agreement in advance but had joined in it thereafter, and because there is a strong federal interest in national uniformity in the interpretation of the Agreement, federal law was held to be controlling in interpreting the Agreement. The court found it unnecessary to reach the constitutional issues in vacating the judgment of the district court, remanding the case for further proceedings consistent with its opinion, including consideration of the propriety of declaratory relief applicable to members of the class.

Statement of Facts

At the time the Complaint was filed, Adams was in the State Correctional Institution at Graterford, Pennsylvania, having resided there since February 6, 1972. At some time before May 3, 1977, a Request for Temporary Custody under the Detainer Agreement, directed to defendant Cuyler and signed by defendant Shusted was lodged against Adams. The Request sought the removal of Adams from Graterford, and from the Pennsylvania prison system altogether, and his transportation to a Camden County, New Jersey jail. Adams was to remain in custody in New Jersey pending disposition of criminal charges against him.

Adams was given a copy of the Request, but was not informed that he could petition defendant Shapp and seek disapproval of his transfer to New Jersey[6] or granted a

6. Respondent Adams alleged in his Complaint that he did not receive notice of his right to petition the governor to disapprove his transfer. Petitioners imply that Adams received notice through receipt of Form I drafted by the COUNCIL OF STATE GOVERNMENTS in its HANDBOOK ON INTERSTATE CRIME CONTROL (rev. ed. 1966) (Brief for Petitioners at 44 n. 11). Nothing on the record contradicts Adams' claim of no notice. If Form I had been utilized, a copy of the form, signed by the prisoner, would have been retained by the Warden and thus available to Petitioners, HANDBOOK, p. 101, but no such document was ever made part of the record in this case.

hearing before transfer to the Camden jail.[7]

If Adams had been afforded a hearing or advised of his right to petition the governor, he would have been able to explain that New Jersey sought him for crimes alleged to have occurred more than three years earlier. Adams could have presented evidence that he was in Pennsylvania, not New Jersey, when these alleged crimes were committed, but, because his main alibi witness had died since the alleged offenses, his ability successfully to establish this defense at trial had been impaired substantially. Adams could also show that the New Jersey authorities knew of his whereabouts in Pennsylvania in June 1975, before the death of his alibi witness, yet failed to proceed against Adams until after her death in February 1976. Thus, Adams might well have been able to persuade the governor or hearing body that the request for removal should be disapproved.

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7. Adams' unsuccessful efforts in the state courts to enjoin transfer without a hearing (Brief for Petitioners at 31 n. 4) do not substitute for the due process protections accorded transferees under the Extradition Act and denied transferees under the Detainer Agreement.

SUMMARY OF ARGUMENT

The language of the Interstate Agreement on Detainers incorporates the rights granted to a prisoner by the Uniform Criminal Extradition Act. Because the Extradition Act remained in effect after the adoption of the Agreement and both statutes concern the same subject matter, principles of statutory construction dictate that these two statutes should be construed together. A joint construction of these two statutes logically leads to the conclusion that the phrase, "[n]othing contained in this article shall be construed to deprive any prisoner of any right . . . to contest the legality of his delivery," (Pet. A. 25a) in Article IV(d) of the Agreement preserves Extradition Act procedural protections when a prisoner is transferred pursuant to Article IV. This interpretation of these two statutes is supported by the language of Article III(e) of the Agreement. This Article states that a prisoner's request for the final disposition of a detainer under Article III constitutes a "waiver of extradition." (Pet. A. 23a-24a). Extradition in this context can only mean a waiver of the extradition rights granted by the Extradition Act.

Legislative history contemporaneous with the Agreement provides further strong support for interpreting the Agreement as preserving a prisoner's rights under the Extradition Act. The major purpose of the Agreement was to benefit prisoners, not to detract from their rights under the Extradition Act. It is therefore absolutely consistent with the desires of the legislature to construe the Agreement as incorporating and thus preserving the rights previously afforded a prisoner under the Extradition Act.

The transfer of persons pursuant to the Detainer Agreement without due process safeguards from the prison system of one state to a jail in a foreign state also violates the United States Constitution. The changes in the length

and conditions of confinement possible under such a transfer inflict a grievous loss upon liberty interests protected by the Fourteenth Amendment. Transferred prisoners are not afforded a hearing nor adequate opportunity to challenge the disruption of the rehabilitative process and the possible extension of the term of confinement. Although the prisoner has the right under the Detainer Agreement to petition the governor to disapprove the transfer request, the prisoner need not be, and here respondent was not, given notice of that right.

Involuntary transfers of fugitives from one state to another to answer criminal charges are ordinarily accomplished pursuant to the Extradition Act, which is applicable to prisoners as well as individuals at-large. This statute guarantees adequate procedural safeguards before transfer. Persons, such as respondent, who are transferred pursuant to the Detainer Agreement, are not afforded the rights provided to similarly situated prisoners transferred pursuant to the Extradition Act. There is no rational basis for this disparate treatment. Accordingly, prisoners transferred under the Detainer Agreement are denied Equal Protection of the law, in violation of the fourteenth amendment.

Argument.

I. THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT CORRECTLY HELD THAT THE INTERSTATE AGREEMENT ON DETAINERS INCORPORATES THE RIGHTS ACCORDED A PRISONER BY THE EXTRADITION ACT.

A. The Language of the Agreement Clearly Indicates that the Drafters Intended To Incorporate into the Agreement the Rights Granted to Prisoners by the Uniform Criminal Extradition Act.

The enactment of the Interstate Agreement on Detainers did not impliedly repeal Uniform Criminal Extradition Act procedures covering the interstate transfer of prisoners.[8] It is a cardinal rule of statutory construction

8. Petitioners have argued that, since the Agreement specifically covers the interstate transfer of prisoners, the Agreement should prevail over the general Extradition Act. (Brief for Petitioners at 45). This argument is based on the erroneous assumptions that the Extradition Act is a general statute, and that there is an inconsistency in affording a prisoner the protection of both statutes. Neither assumption is true.

The Uniform Extradition Act is not a general statute. Although Section 2 states that the Act is to apply to "any person charged" with a crime, respondents do not rely on this general language. 19 P. S. § 191.2 (Pet. A. 32a). Section 5 of the statute specifically deals with the extradition of "persons imprisoned or awaiting trial in another state." 19 P. S. § 191.5 (Pet. A. 34a). This language specifically places prisoners within the protections of the Extradition Act.

In addition, even if the Extradition Act were a general statute, subsequent enactment of a specific statutory provision will not defeat a general statute unless the two statutes are inconsistent. C. D. SANDS, 2A SUTHERLAND, STATUTORY CONSTRUCTION § 51.02 (1972). Effect should be given to nonconflicting provisions of overlapping statutes. **United States v. Burnett**, 505 F. 2d 815, 816 (9th Cir. 1974), *cert. denied* 420 U. S. 966 (1975). Since in this case the two statutes the Third Circuit examined are "complementary rather

that the enactment of subsequent legislation concerning the same subject matter as an earlier statute will not repeal the earlier statute by implication unless there is a substantial inconsistency between the two statutes or evidence of an intention to limit or repeal the first enactment. *See* **TVA v. Hill,** 437 U. S. 153, 189 (1978); **Morton v. Mancari,** 417 U. S. 535, 549 (1974); **Posados v. National City Bank,** 296 U. S. 497, 503 (1936); C. D. SANDS, 1A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, Sections 23.09, 23.10 (1972) (strong presumption against implied repeal). Instead, statutes on the same subject are construed together. **United States v. Borden Co.,** 308 U. S. 188, 198 (1939). *See* 2A SUTHERLAND, *supra,* Section 51.02.

Article IV(d) of the Agreement is designed to preserve prisoner rights. This section states:

> "Nothing contained in this article shall be construed to deprive any prisoner of *any right* which he may have to contest the legality of his *delivery as provided in paragraph (a) hereof,* but such delivery may not be opposed or denied on the ground that the

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8. (Cont'd.)

than conflicting," **Adams v. Cuyler,** 592 F. 2d 720, 725 (3d Cir. 1979) (Pet. A. 10a), there is no inconsistency involved in affording an inmate Extradition Act protection.

Petitioners' reliance on **Prieser v. Rodriguez,** 411 U. S. 475 (1973) is similarly misplaced. (Brief for Petitioners at 45). In **Rodriguez** this Court required prisoners attacking their confinement to proceed by habeas corpus instead of the Civil Rights Act. However, the statute construed in **Rodriguez,** 42 U. S. C. § 1983, was indeed a general statute, applicable to "every person" deprived of civil liberties by a state. Unlike the Extradition Act in the instant case, no provision of § 1983 specifically applied to prisoners. In addition, there was an inconsistency between the Civil Rights Act and the habeas corpus statute. The habeas corpus statute required state prisoner exhaustion of state remedies while § 1983 did not. **Rodriguez,** therefore, does not support petitioners' argument.

executive authority of the sending state has not affirmatively consented to or ordered such delivery."

19 P. S. § 1431 Art. IV(d) (Pet. A. 25a) (emphasis added).

The phrase "as provided in paragraph (a) hereof" within Article IV(d) is logically construed to modify "delivery," not "any right." The Interstate Agreement on Detainers contains two statutory procedures, Article III and Article IV, for arranging the transfer of a prisoner to another state in order to stand trial for crimes committed there. 19 P. S. § 1431 Arts. III, IV (Pet. A. 22a-25a). Whereas Article III is concerned with the transfer procedure when a prisoner requests final disposition of a detainer lodged against him, Article IV is concerned with the transfer procedure "by which a prosecutor who has lodged a detainer against a prisoner in another State can secure the prisoner's presence for disposition of the outstanding charges." **United States v. Mauro,** 436 U. S. 340, 351 (1978). Because the Agreement contains two possible transfer procedures and the legislature only wished to incorporate Extradition Act protections into the Agreement when a prisoner was transferred pursuant to Article IV(a), it was necessary to specify which prisoner delivery procedure was the object of Article IV(d). In order to accomplish this the phrase "as provided in paragraph (a) hereof" was inserted to modify delivery. Hence a prisoner retains "any right" he has to contest his delivery only when he is transferred under Article IV.[9]

The most important rights which Article IV(d) was designed to preserve are the procedural rights prisoners

9. All later references to prisoner delivery within Article IV(d) support the interpretation advocated by this brief. "Delivery" is always preceded by the word "such." The word "such" is meant to clarify which delivery is being referred to throughout this section, *i.e.*, "delivery as provided in paragraph (a) hereof." 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a).

were granted by the Extradition Act. *See* 19 P. S. § 191.10 (Pet. A. 32a). The rights preserved by Article IV(d) cannot possibly be only the right to petition the governor as petitioners have claimed. (Brief for Petitioners at 39). The language "any right" suggests that a plurality of rights were meant to be preserved by the Agreement. The right to petition the governor is only one right.[10]

Furthermore, if the Agreement was intended to modify Extradition Act procedural rights, it would have explicitly done so. Article IV(d) of the Agreement clearly modified Extradition Act procedures which had required the affirmative consent of the executive authority of the sending state to prisoner delivery. As noted by the Court of Appeals below, "the fact that Article IV(d) does specifically refer to one minor procedural feature of the extradition process which is to be affected suggests forcefully that other aspects, particularly those furnishing safeguards to the prisoner, are to continue in effect." 592 F. 2d 720, 724 (3d Cir. 1979) (Pet. A. 9a). Therefore, the Extradition Act must be a source of rights preserved by Article IV(d). The opinion of the court below correctly construed the Agreement in this manner.[11]

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10. Article IV(d) would have been drafted differently if the legislature had sought to preserve only the right to petition the governor. For instance, the drafters might have changed the language "any right" to "the right," moved up the phrase "as provided in paragraph (a)" to modify "any right" instead of "delivery," or specified the one prisoner right which was being protected by Article IV(d) rather than resorting to a confusing cross-reference.

In addition, the right to petition the governor is not a right of which the statute requires the prisoner be informed. *See* Meyer, **Effective Utilization of Criminal Detainer Procedures,** 61 Iowa L. Rev. 659, 670 (1975). If the drafters had been concerned enough about protecting the prisoner's right to petition the governor to give it specific protection in Article IV(d), surely they would have also provided within the statute that the prisoner be informed of this right.

11. *Accord,* **Moen v. Wilson,** 189 Colo. 85, 536 P. 2d 1129 (1975); **McQueen v. Wyrick,** 543 S. W. 2d 778 (Mo. 1976); **State**

11. (Cont'd.)

ex rel. Garner v. Gray, 55 Wis. 2d 574, 201 N. W. 2d 163 (1972). *But see* **State v. Thompson,** 133 N. J. Super. 180, 185, 336 A. 2d 11, 14 (1975); **Hystad v. Rhay,** 12 Wash. App. 872, 533 P. 2d 409 (1975); **Commonwealth ex rel. Coleman v. Cuyler,** 396 A. 2d 394 (Pa. Super Ct. 1978); **Wertheimer v. State,** 294 Minn. 293, 201 N. W. 2d 383 (1972). The state opinions which have not construed the Agreement as incorporating Extradition Act procedures lack detailed, if any, statutory analysis.

In addition, state interpretations of interstate compacts, such as the Agreement, are not binding on the federal courts. The Constitution states: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with Another State . . . ." U. S. Const. art. I, § 10, cl. 3. In **Petty v. Tennessee-Missouri Bridge Commission,** 359 U. S. 275, 278 (1959), this Court stated that, "The construction of a compact sanctioned by Congress . . . presents a federal question," and that "the meaning of a compact is a question on which this Court has the final say." *Id.* (*citing* **Delaware River Commission v. Colburn,** 310 U. S. 419, 427 (1940); **Dyer v. Sims,** 341 U. S. 22, 28 (1951)).

The construction of this particular compact is plainly a matter of federal law. Under the law of the Union doctrine a compact, by virtue of congressional sanction, becomes a "federal 'title, right, privilege or immunity.'" **Delaware River Commission v. Colburn,** 310 U. S. 419, 427 (1939); **League to Save Lake Tahoe v. Tahoe Regional Planning Agency,** 507 F. 2d 517 (9th Cir. 1974), *cert. denied* 420 U. S. 974 (1975). Congress had given advance consent for "any two or more States to enter into agreements . . . for cooperative effort . . . in the prevention of crime." 63 Stat. 107, § 111 (1949), as amended, 4 U. S. C. § 112 (1970). In addition, Congress later specifically manifested its consent to the Interstate Agreement on Detainers when the United States became a party to the Agreement. *See* 116 Cong. Rec. 13997-14000, 38840-38842 (1970). Thus, by virtue of Congressional approval of the Agreement, the interpretation of this statute is controlled by federal law. *Accord*, **Echevarria v. Bell,** 579 F. 2d 1022, 1024-1025 (7th Cir. 1978); **United States ex rel. Esola v. Groomes,** 520 F. 2d 830 (3d Cir. 1975) (Garth, J., concurring).

Secondly, the Agreement is concerned with the important national interest of national unity in the administration of justice. **Michigan v. Doran,** 439 U. S. 282, 288 (1978). The Agreement has been used to "extradite" prisoners. The fact that the Constitution contains the extradition clause is indicative of the importance of this national objective and distinguishes the Agreement, as an embodiment of these objectives, from other interstate compacts. This provides additional support for the use of federal law to interpret the Agreement. *See* **Smith v. Idaho,** 373 F. 2d 149 (9th Cir. 1967).

The decision of the court of appeals is further supported by the language of Article III(e) of the Agreement. Article III(e) provides in relevant part that:

> "Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated therein . . . and a waiver of extradition to a receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state."

19 P. S. § 1431, Art. III(e) (Pet. A. 23a-24a).

The phrase "waiver of extradition" can only mean the waiver of the statutory extradition rights conferred upon the prisoner by the Extradition Act. Clearly, a waiver of extradition necessarily means a waiver of extradition rights because the use of the word waiver only makes sense when juxtaposed with rights. The extradition rights an inmate waives when he requests final disposition of a detainer must be statutory because the United States Constitution Extradition Clause, Article IV, Section 2, Clause 2, deals with the state's obligation to extradite and does not confer upon a prisoner any extradition rights. Therefore, a prisoner must have statutory extradition rights to waive.

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11. (Cont'd.)

Finally, uniformity can be achieved only by a controlling federal interpretation of the Agreement. A federal interpretation avoids the varying interpretations which states have placed on the Agreement, and the consequent administrative difficulties which conflicting obligations create for sending states. *See* **United States ex rel. Esola v. Groomes,** 520 F. 2d 830, 841 n. 3 (3d Cir. 1975). National uniformity is also furthered as a practical matter because the many states which have enacted the Interstate Agreement on Detainers and the Uniform Extradition Act are all subject to the same interpretation of these statutes. *See* **11 Uniform Laws Annotated** at 10, 68 (1980 Supp.) (the Interstate Agreement on Detainers has been adopted in 47 states, the United States, and the District of Columbia; the Extradition Act has been adopted in 49 states).

The only conceivable origin of these particular rights is the Extradition Act.[12]

12. Petitioners argue that because Article III(e) is phrased in terms of extradition, not Extradition Act procedures, the term extradition could not mean Extradition Act (Brief for Petitioners at 40-42). To support this argument they cite **Terlinden v. Ames,** 184 U. S. 270, 289 (1902), which defines extradition, when used in an international context, as the surrender of an individual from one nation to another. Petitioners also claim that because the directions for implementing the Agreement found in the 1966 edition of the COUNCIL OF STATE GOVERNMENTS, HANDBOOK ON INTERSTATE CRIME CONTROL, do not suggest that a prisoner is entitled to formal extradition proceedings, he does not have them.

Petitioners' argument is flawed in several respects. They have confused international and interstate extradition. Obviously, the drafters of the Agreement were not referring to international extradition in an interstate act. The extradition clause within the Constitution specifically deals with state obligations. States cannot interfere in foreign affairs, an area reserved by the Constitution exclusively to the President and Congress. **Zschernig v. Miller,** 389 U. S. 429, 432 (1962). Therefore, in this context, extradition must mean interstate extradition. Since interstate extradition is almost uniformly governed by the Extradition Act, the reference in Article III(e) is logically to Extradition Act procedures.

In addition, petitioners' argument is not supported by the COUNCIL OF STATE GOVERNMENTS, HANDBOOK ON INTERSTATE CRIME CONTROL (rev. ed. 1966). The handbook does not advocate depriving prisoners of the protections afforded by the Extradition Act. In fact, forms 1 and 2 in this handbook both inform the prisoner that a request for final disposition of a detainer constitutes a waiver of extradition. *Id.* at 101-02. The "Suggested Instructions for Wardens" provide that all prisoners with detainers lodged against them receive form 1. *Id.* at 112-13. It is evident that the handbook, if anything, supports preserving a prisoner's right to Extradition Act procedures.

Even if this handbook had supported petitioners argument, it would have little, if any, value for statutory interpretation. It was published after fifteen states had already ratified the Agreement on Detainers. *Id.* at 99. Clearly, the handbook could not have influenced the original drafters. Therefore, assuming it is relevant at all, it should not carry the same weight as legislative history contemporaneous with the Agreement itself. *Cf.* **United States v. Southwestern Cable Co.,** 392 U. S. 157, 170 (1968) ("the views of one Congress as to the construction of a statute adopted many years before by another Congress have 'very little, if any, significance.'") (citations omitted). Since at the time this handbook was published there were "relatively few reported cases

The language of Article IV(d) and Article III(e) demonstrates that it was absolutely correct for the Court of Appeals to construe the Interstate Agreement on Detainers as incorporating the procedural protections of the Extradition Act.[13]

B. The Legislative History of the Interstate Agreement on Detainers Supports the Court of Appeals' Interpretation of the Agreement.

Even if the statutory language did not compel the conclusion that Article IV of the Detainer Agreement preserves the Extradition Act rights of a transferred prisoner, the legislative history of the Agreement would do so.[14] The comments of the Council of State Govern-

12. (Cont'd.)
construing procedure and practice under the compact," HANDBOOK, *supra* at 115, the handbook was merely echoing, without legal precedent, how some of the states may have been interpreting the Agreement. Thus, the handbook does not support petitioners' position and has little, if any, value as a guide for statutory interpretation.

13. Indeed, if petitioners are correct in their argument that the Agreement was contemplated by and in direct response to language within Section 5 of the Extradition Act (Brief for Petitioners at 44 n. 11), the Extradition Act and the Agreement must be read together. If the drafters of the Detainer Agreement intended to complement the Extradition Act, then the phrases "any right" and "extradition" in the Agreement refer to the rights under the Extradition Act which are waived under Article III and preserved under Article IV of the Detainer Agreement.

14. Plainly petitioners cannot complain about the fact that the court of appeals used legislative history to bolster its interpretation of the Detainer Agreement (*see* Brief for Petitioners at 42-43). At the most, the interpretation urged by petitioners is an alternative to the reading adopted by the court of appeals. In that case, it would be permissible to look beyond the language of the statute itself because the language of the Agreement was ambiguous. As previously discussed, the phrase "any right" within Article IV(d) could be construed as referring either to the right to petition the governor or the right to Extradition Act procedures, and, indeed, various state and federal courts have given different constructions

ments concerning the proposed Detainer Agreement distinguish between the rights of the prisoner, which are preserved, and the rights of the state which are diminished: [15]

> "Normally, the only way to get a prisoner from one jurisdiction to another for purposes of trial on an indictment, information or complaint is through resort to extradition or waiver thereof. If the prisoner waives, there is no problem. However, if he does not waive extradition, *it is not appropriate to attempt to force him to give up the safeguards of the extradition process,* even if this could be done constitutionally. *Nevertheless, the right to insist on action by the governor is a right of the state and not of the prisoner.* Consequently, it is provided that the prisoner shall not be able to plead gubernatorial inactivity in resist-

14. (Cont'd.)

to the language of the Agreement. *See* note 11 *supra.* This ambiguity is sufficient to warrant the introduction of legislative history for clarification. Moreover, even if the Agreement language were clear, there is "wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on "superfiicial examination."'" **Harrison v. Northern Trust Co.,** 317 U. S. 476, 479 (1943) (*quoting* **United States v. American Trucking Associations,** 310 U. S. 534, 543-44 (1940), *citing* **United States v. Dickerson,** 310 U. S. 554, 562 (1940)). For example, although this Court concluded in **United States v. Oregon,** 366 U. S. 643, 648 (1961), that a statutory provision was "clear and unequivocal" it still went on to discuss the statute's legislative history and determine that it was "nonconclusive." *Id.* Certainly there is nothing in the case at hand which prevents the consideration of legislative history.

15. Language contained in ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SPEEDY TRIAL, Section 3.1(d) (1967), supports this reading of the legislative history. Its suggested standard to protect the right to speedy trial of a person serving a term of imprisonment differentiates between "the traditional right of the executive to refuse transfer and the right of the prisoner to contest the legality of his delivery." *Id.*

ing delivery to the other state. The situation contemplated by this portion of the agreement is different from that dealt with in Article III. That article relates to proceedings initiated at the request of the prisoner. Accordingly, in such instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, *it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights.* Nevertheless, Article IV(a) gives the governor an opportunity to refuse the request for prisoner availability if the governor acts within thirty days. It is quite likely that in a large majority of cases there will be no gubernatorial action or even a request for it. The possibility is left open merely to accommodate situations involving public policy which occasionally have been found in the history of extradition."

COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION, PROGRAM FOR 1957, 78-79 (1956) (emphasis added).

As these comments indicate, Article IV modified the rights of the sending state while leaving those of the prisoner intact. A request for a prisoner made by a demanding state under the Agreement, unlike the Extradition Act, no longer required gubernatorial approval from the sending state. *Compare* 19 P. S. § 191.19 *with* 19 P. S. § 1431 Art. IV(d) (Pet. A. 40a-41a, 25a). However, the language of Article IV(d) indicates that the Agreement was not meant to detract from then existing prisoner rights. 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a). Consequently, even if there are conflicting states' rights

under the Extradition Act and the Agreement, only the portions of the Extradition Act which concern the rights of the state should be considered modified.[16] Prisoner rights, such as the right to notice and a hearing under Section 10 of the Uniform Extradition Act, should remain in force.[17] 19 P. S. § 191.10 (Pet. A. 36a).

Furthermore, the remedial nature of the Agreement supports an interpretation which favors prisoners' rights. The fact that the Agreement is intended to benefit prisoners is illustrated by the House and Senate Reports which dealt with the need for this legislation. These reports stressed the need for detainer reforms designed to minimize the destructive impact of detainers on prisoners.

> "[A] prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers

16. The Court of Appeals in **Atkinson v. Hanberry,** 589 F. 2d 917 (5th Cir. 1979), failed to recognize the distinction between the rights of the sending state and the rights of the prisoner. *Id.* at 919. However, because the issue was not raised and because this case concerned the transfer of a prisoner from federal custody to state custody instead of interstate extradition, the **Atkinson** court did not specifically decide whether the Interstate Agreement on Detainers incorporates Extradition Act procedures. 539 F. 2d at 920 n. 6.

17. Granting an inmate the right to the essential protections of an Extradition Act hearing would enable him to question:

> "(a) whether the [requesting] . . . documents on their face are in order;
>
> (b) whether the [prisoner] . . . has been charged with a crime in the demanding state;
>
> (c) whether the [prisoner] . . . is the person named in the request for extradition; and
>
> (d) whether the [prisoner] . . . is a fugitive."

Michigan v. Doran, 439 U. S. 282, 289 (1978).

> are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing."

United States v. Mauro, 436 U. S. 340, 353 (1978) (citing H. Rep. No. 91-1018, at 3 (1970); S. Rep. No. 91-1356, at 3 (1970)).[18] This purpose is explicitly recognized in Article I of the Agreement. *See* 19 P. S. § 1431, Art. I (Pet. A. 21a).

Moreover, the remedial thrust of the Agreement is specifically recognized in Article IV. In **United States v. Mauro,** this Court recognized that the real concern behind the Article IV requirement that a prisoner be tried before he is returned to the sending state was that "if the prisoner were returned to the sending State prior to the disposition of the charges in the receiving State, the detainer previously lodged against him would remain in effect with all its attendant problems." 436 U. S. 340, 361 n. 26 (1978). Therefore, Article IV should be construed in a manner consistent with its remedial purposes.[19] Such a

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18. *See also* **United States v. Ford,** 550 F. 2d 732, 737-40 (2d Cir. 1977), *aff'd sub nom.*, **United States v. Mauro,** 436 U. S. 340 (1978); **Stroble v. Anderson,** 587 F. 2d 830, 835-36 (6th Cir. 1978), *cert. denied*, 440 U. S. 940 (1979); **Pitts v. North Carolina,** 395 F. 2d 182, 187 (4th Cir. 1968); Bennett, **The Last Full Ounce,** 23 Fed. Prob. 20 (June 1969); Note, **The Detainer: A Problem in Interstate Criminal Administration,** 48 Colum. L. Rev. 1190 (1948); Note, **Convicts—The Right to Speedy Trial and the New Detainer Statutes,** 18 Rutgers L. Rev. 828 (1964).

Contrary to petitioners' argument that a free citizen who is extradited should not receive fewer procedural protections than a prisoner who has a detainer lodged against him (Brief for Petitioners at 47), the unique disadvantages which the detainer creates for inmates justify giving prisoners the protections of both the Agreement and the Extradition Act.

19. *See* **Peyton v. Rowe,** 391 U. S. 54, 65 (1968); **Tcherepnin v. Knight,** 389 U. S. 332, 336 (1967); COUNCIL OF STATE GOVERN-

liberal construction, as required by Article IX of the Agreement, 19 P. S. § 1431, Art. IX (Pet. A. 29a), would incorporate the rights guaranteed a prisoner by the Extradition Act.

The Agreement was primarily designed to safeguard prisoner rights and it is totally consistent with legislative intent to construe the Agreement in the prisoner's favor.[20] If a prisoner wishes to accelerate the disposition of a detainer lodged against him in order to diminish the disruptions caused by the lodging of the detainer, he can proceed under Article III or waive his rights under Article IV. However, a prisoner demanded under Article IV should not be forced to sacrifice the Extradition Act rights which he held prior to the adoption of the Agreement.

II. INTERSTATE TRANSFER OF PRISONERS WITHOUT NOTICE OR HEARING VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Even if Adams had no statutory right under the Detainer Agreement to Extradition Act protections, the

19. (Cont'd.)

MENTS, SUGGESTED STATE LEGISLATION, PROGRAM FOR 1957, 78 (1956); C. D. SANDS, 3 SUTHERLAND, STATUTORY CONSTRUCTION, § 60.01 (1972).

20. Petitioners claim that the Agreement policy favoring swift disposition of detainers would be subverted by allowing an inmate a "reasonable time" to apply for a writ of habeas corpus. (Brief for Petitioners at 46-47). This is incorrect. Allowing a prisoner a reasonable time to file for a writ of habeas corpus would not significantly lengthen the detainer process. The reasonable time a judge fixes for a prisoner to file for a writ of habeas corpus under the Extradition Act can run concurrently with the thirty days a prisoner is given to petition the governor under the Detainer Agreement. If a prisoner decides to apply for the writ, the habeas corpus hearing can be held as early as the thirty-first day after a detainer has been lodged against a prisoner. Furthermore, the Agreement's concern with the swift disposition of detainers is only indirectly for the benefit of the government, but is based upon the prisoner's direct rehabilitation interest.

Constitution prohibits his transfer from the prison of one state to a jail in a foreign state without the basic protections of notice and a hearing.

The fourteenth amendment's protection against the deprivation of liberty without due process of law remains viable even when an individual's liberty is already abridged under lawful sentence. *See, e.g.*, **Wolff v. McDonnell,** 418 U. S. 539, 555-56 (1974); **Gagnon v. Scarpelli,** 411 U. S. 778 (1973); **Morrissey v. Brewer,** 408 U. S. 471 (1972). A prisoner's rights and privileges may be diminished only to the extent required "by the needs and exigencies of the institutional environment;" his rights are only "subject to restrictions imposed by the nature of the regime to which [he has] been lawfully confined." **Wolff v. McDonnell,** *supra* at 555-56. An ordinary citizen cannot be removed from his home in one state and taken against his will to another state without notice and hearing. A prisoner should be entitled to the same due process protections, since summary removal is not necessitated by the exigencies of the institutional environment or the nature of the prison regime to which he has been confined.

A. Interstate Transfer of Prisoners for As Long As 120 Days Without the Most Basic Due Process Safeguards Impermissibly Infringes Upon Liberty Interests Protected by the Fourteenth Amendment.

Transfer under the Detainer Agreement may extend the term of an individual's prison confinement significantly. The Detainer Agreement permits a prisoner with only days or weeks left before the completion of his sentence to be sent to another state and held for up to 120 days, thus effectively extending the term of his incarceration without fundamental due process safeguards merely be-

cause he happened to be imprisoned and not at large on the day the necessary papers were received. The liberty interest of an individual whose sentence has been completed is identical to that of an ordinary citizen who may not be plucked from his home and transported against his will to another state without notice and hearing.

Similarly, a prisoner whose parole is imminent will necessarily be denied this increased freedom for reasons unrelated to eligibility in the sending state. Although there is no constitutional right to parole, the revocation of parole once earned and granted may not be accomplished without basic due process protection. **Greenholtz v. Nebraska Penal Inmates,** 442 U. S. 1, 9 (1979); **Morrissey v. Brewer,** *supra* at 480-84. Certainly if parole presents a liberty interest sufficient to require that no revocation take place without a hearing (even in the face of parole violations), then the unavailability of *earned* parole under the Detainer Agreement during the term of incarceration in the receiving state must represent a loss of a similar interest. In addition, there exists a protected liberty interest in the deprivation of good time credits accrued toward parole. **Wolff v. McDonnell,** *supra* 418 U. S. at 571-72, n. 19. Successful completion of in-prison programs is often relevant for an inmate's parole or acceptance into a pre-release program. A transfer under the Detainer Agreement may last for months, thus impairing the acquisition of a greater measure of liberty, since the grant of parole and pre-release is predicated in part upon an individual's good behavior in prison. His behavior in a foreign jail is impossible for the parole authorities in the sending state to evaluate.

Transfer under the Detainer Agreement may represent a major change in the conditions as well as the length of confinement. Removal and transfer to a foreign state's

jail for as long as 120 days is analogous to removal from the general prison population and transfer to solitary confinement, a change in the conditions of imprisonment which may not be accomplished without due process safeguards. **Enomoto v. Wright,** 434 U. S. 1052 (1978), *aff'g* 462 F. Supp. 397 (N.D. Cal. 1976); **Wolff,** *supra* at 557. At stake in both the Detainer Agreement and solitary confinement transfers is the disruption of the prisoner's environment, including any number of educational, work, or other rehabilitative programs. The inmate's personal progress, rehabilitation, and opportunities for post-prison employment may be substantially retarded or even extinguished by such transfers. As a practical matter, the only interests a person has while in prison are rehabilitation, freedom of movement within the institution, and the opportunity to obtain early release, all of which are infringed upon by removal and interstate transfer. Yet, ironically, jails and detention centers share with solitary confinement, if for different reasons, an almost total lack of rehabilitation programs and recreational facilities which are available to the general population of convicted prisoners. In addition, transfers may take a prisoner across the country, away from family and friends who support him.

The impairment of liberty triggered by transfer under the Detainer Agreement, the change of sovereignty of the jailor and the existence of a statutory scheme which gives at least a limited right to petition the governor for disapproval distinguish interstate transfer from the intrastate transfer of prisoners within a unitary system, which may be carried out without notice, hearing, or reason. **Montanye v. Haymes**, 427 U. S. 236 (1976); **Meachum v. Fano,** 427 U. S. 215 (1976). In those cases, the Court emphasized that intrastate transfers are often routine matters which may be ordered for any or no reason; that the

imposition of due process limitations on such transfers "would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts," **Meachum v. Fano,** *supra* at 225; that the deprivation of liberty authorized by a valid conviction includes confinement in any of the state's prisons; that the conditions and degree of confinement are within the sentence imposed; and that, therefore, sufficient due process protection is afforded during the criminal trial.

Contrary to the contention of petitioners, on the other hand, the prisoner's liberty interest changes significantly when he crosses a state's boundary. (Brief for Petitioners at 50-52). While the conditions of imprisonment may be changed by intrastate transfer (*e.g.*, minimum security to maximum security), the term of imprisonment is not affected by such a transfer.[21] Furthermore, the administrative considerations underlying the decisions involving intrastate transfer are not applicable to interstate transfers under the Detainer Agreement. Thus, **Montanye** and **Meachum** are inapposite to the instant case. Moreover, the Court in **Meachum** recognized that a greater liberty interest exists even in intrastate transfer when there is a right or justifiable expectation rooted in a state law that the prisoner will not be transferred except for misbehavior or upon the occurrence of specified events. **Meachum v. Fano,** *supra* at 226-27. Certainly a person committed to serve as a sentenced prisoner in the Pennsylvania prison system has a reasonable expectation that he will serve his term there. It is clear that a person's liberty is protected by due process even when that liberty is a statutory creation of the state. **Wolff v. McDonnell,** *supra,* 418 U. S. at 558.

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21. In **Montanye,** the Court stressed that the transfer to a maximum security facility was effected without loss of good time, segregated confinement, loss of privileges, or any other disciplinary measures. **Montanye v. Haymes,** *supra* at 238.

Nor does the one case upholding an interstate transfer occurring pursuant to a compact establishing a joint system of interstate prisons [22] support petitioners. Such a transfer is more like intrastate transfer than interstate transfer under the Detainer Agreement. *See* **Sisbarro v. Warden, Mass. State Penitentiary,** 592 F. 2d 1, 3 (1st Cir. 1979), *cert. denied,* — U. S. —, 100 S. Ct. 99 (1979). There is no significant change in the term of confinement engendered by a joint-system transfer where the cooperating state systems function in effect as a single unit. Nonetheless, the First Circuit erred in its analysis in **Sisbarro** when it concluded that the burden of disadvantage to prisoners is no longer a viable test for the need for due process safeguards, and that therefore there is no distinction between intra and interstate transfer. **Sisbarro,** *supra* at 3. This reasoning ignores the Court's pronouncement that consideration of what safeguards may be required under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the prisoner's interest

22. *See* New England Interstate Corrections Compact, M. G. L. ch. 125, App. Secs. 1-1-1-3. Article I of the Compact reads:

> "The party states, desiring by common action to fully utilize and improve their institutional facilities and to provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. *The purpose of this compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.*"

Id. (emphasis added). The goal of enhancing treatment and rehabilitation through pooling of resources distinguishes this compact from the Detainer Agreement under which members maintain rigid separation of state prison systems, facilities, procedures, and resources.

affected by government action. **Wolff v. McDonnell,** *supra,* 418 U. S. at 560, (*quoting* **Morrissey v. Brewer,** 408 U. S. at 481).

That proceedings under the Detainer Agreement involve a significant impairment of liberty is, moreover, made clear by the fact that mere lodging of a detainer is considered to be sufficient custody for purposes of federal habeas corpus jurisdiction, *see, e.g.,* **Braden v. 30th Judicial Circuit Court,** 410 U. S. 484, 489 n. 4 (1973), and has been held to constitute an arrest by the Supreme Court of Pennsylvania, **Commonwealth ex rel. Knowles v. Lester,** 456 Pa. 423, 321 A. 2d 637 (1974). Under the Detainer Agreement, the first step in the removal and transfer process is the lodging of a detainer. If that step alone imposes an additional and different restraint upon the prisoner sufficient to constitute custody and an arrest, certainly the further steps of removing and holding the prisoner for four months—or perhaps more—in a foreign jail affect the prisoner's liberty interest under the due process clause as well. As in transfer from a prison to a mental hospital, transfer under the Detainer Agreement constitutes a "major change in the conditions of confinement amounting to a grievous loss that should not be imposed without the opportunity for notice and an adequate hearing." **Vitek v. Jones,** 48 U. S. L. W. 4317, 4319 (Mar. 25, 1980).

B. The Fundamental Due Process Protections of Notice and a Hearing are Constitutionally Mandated Before Interstate Transfer.

The Detainer Agreement grants the prisoner the right to petition the governor for disapproval of the demanding state's request for transfer. This statutory right is itself a liberty interest protected against deprivation by the due process clause. *See, e.g.,* **Wolff v. McDonnell,** *supra,* 418 U. S. at 557-58. At the very least, due process

standards mandate that a prisoner be notified of his right to petition the governor to disapprove the transfer.

The summary removal and transfer proceedings sanctioned by the Detainer Agreement are precisely the type of arbitrary state governmental action the due process clause of the fourteenth amendment was intended to prevent. Indeed, "[t]he touchstone of the Due Process clause is protection of the individual against arbitrary action of the government." **Wolff v. McDonnell,** *supra,* 418 U. S. at 558 (1974), *quoting* **Dent v. West Virginia,** 129 U. S. 114, 123 (1889). Nothing is more arbitrary than granting a right but neglecting to inform the intended beneficiary of it. The request for transfer rarely will come to the attention of the governor for disapproval unless the prisoner not only has the right to make such a motion, but also is told that he has it. The prisoner's petition in response to a request for his transfer under the Detainer Agreement must be distinguished from a prisoner-initiated petition, such as a request for pardon. Under the terms of the Detainer Agreement, it is the government which initiates action against the prisoner and the petition is in response to a proposed change in the existing term and conditions of imprisonment. Common sense, proper statutory construction, and concepts of fundamental fairness encompassed by the due process clause mandate that every prisoner be given notice of his right to petition the governor.

It is evident that persons transferred between states under the Detainer Agreement are entitled to some procedural safeguards under the due process clause.[23] The

23. Two of the three highest state courts which have considered the issue have held that the Detainer Agreement would be unconstitutional without the due process safeguards of notice and hearing. **Moen v. Wilson,** 189 Colo. 85, 536 P. 2d 1126 (1975); **State ex rel. Garner v. Gray,** 55 Wis. 2d 574, 201 N. W. 2d 163 (1972). *Compare* **Wertheimer v. State,** 294 Minn. 293, 201 N. W. 2d 383 (1972).

prisoner must, at the least, receive advance notice of the demanding state's request and of his right to petition the governor for disapproval of that request. *See, e.g.*, **Wolff v. McDonnell,** *supra,* 418 U. S. at 563-64; **Gagnon v. Scarpelli,** *supra,* 411 U. S. at 786; **Morrissey v. Brewer,** *supra,* 408 U. S. 486-87; **In Re Gault,** 387 U. S. 1, 33 (1967).

In addition to notice, some form of hearing should be held to assure that there is no mistake as to the identity of the person to be removed, that the demanding state's charging and requesting documents are in order, and that the prisoner has a reasonable opportunity to present evidence in opposition to his removal and transfer. *See, e.g.*, **Michigan v. Doran,** 439 U. S. 282, 289 (1978); **Wolff v. McDonnell,** *supra,* 418 U. S. at 566-67; **Gagnon v. Scarpelli,** *supra,* 411 U. S. at 790; **Ham v. South Carolina,** 409 U. S. 524 (1973); **Morrissey v. Brewer,** *supra,* 408 U. S. at 487-89.

> "No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done."

Joint Anti-Fascist Committee v. McGrath, 341 U. S. 123, 171-72 (1951) (Frankfurter, J., concurring).

Our Constitution contemplates that due process will accomplish more than the avoidance of error. Recognition of the integrity of the individual demands that one whose liberties are about to be curtailed be given an opportunity to be heard from and told why. These rights exist separately from the right to secure a different outcome.

Petitioners rely on **Frisbie v. Collins,** 342 U. S. 519 (1952), and **Lascelles v. Georgia,** 148 U. S. 537 (1893), in support of their proposition that respondent has no constitutionally protected rights governing his interstate transfer. This reliance is misplaced, since **Frisbie** and **Lascelles** involve challenges to criminal trials held and convictions obtained in the prosecuting state after interstate transfer. **Frisbie** stands only for the proposition that, since the manner of delivery for trial in no way impinges upon the fairness or the constitutionality of the trial process, it does not render reversible an otherwise valid judgment. In the instant case, respondent does not contest his New Jersey criminal proceeding. Unlike Frisbie, he attacks his interstate transfer directly and raised this attack in advance of transfer.

Petitioners would over-extend **Frisbie** to support the proposition that interstate transfers are not subject to any constitutional limitations or safeguards. This is inaccurate for, while no particular form of procedure is constitutionally required, the absence of all procedural safeguards would allow a state to use the courts to aid it in abducting citizens of other states to answer criminal charges without any notice to the person to be kidnapped that he might protest or even an informal inquiry into whether the person to be seized is the person wanted. Certainly such anarchical "justice" is not consistent with modern concepts of due process of law which have been evolving over the past half century or more.

III. TRANSFER UNDER THE DETAINER AGREEMENT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT SINCE SIMILARLY SITUATED PRISONERS TRANSFERRED UNDER THE EXTRADITION ACT ARE ENTITLED TO ADEQUATE PROCEDURAL SAFEGUARDS WHICH ARE DENIED TO PRISONERS TRANSFERRED UNDER THE DETAINER AGREEMENT.

Interstate transfers of persons for criminal prosecution are ordinarily accomplished pursuant to the Extradition Act. This statute applies to all such transfers, including those involving persons serving a term of imprisonment. The continued application of the Extradition Act may be inferred from 19 P. S. § 191.5 (Pet. A. 34a) which allows the Commonwealth to seek custody of prisoners in other states and from the fact that party states to the Extradition Act may seek extradition of Pennsylvania prisoners. **Commonwealth ex rel. Coleman v. Cuyler,** 396 A. 2d 394, 402 (Pa. Super. Ct. 1978) (Spaeth, J., dissenting). Even if authorities in every state accepted petitioner's contention that all Pennsylvania prisoners may only be transferred under the Detainer Agreement, this ignores the Agreement's provision that it may be used only when both the sending and receiving states are parties to the Agreement. To date, the Detainer Agreement has not been adopted by all the states.[24] Therefore, a Pennsylvania prisoner requested by a state not a party to the Agreement is provided with the more expansive protections of the Extradition Act, while respondent and other prisoners like him may not avail themselves of these protections.

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24. *See* 11 Uniform Laws Annotated at 68 (Supp. 1980).

A. The Detainer Agreement and Extradition Act Differ Substantially in Both the Type and Degree of Protection Afforded Prisoners.

The procedures for interstate transfer under the Extradition Act provide far superior protections for the prisoner than those under the Detainer Act. First, rather than the simple written request presented to the prison authorities under the Detainer Agreement, the Extradition Act requires a formal request by the governor of the demanding state addressed to the governor of the sending state. This request must be accompanied by charging documents and must contain recitals that, *inter alia*, the person requested was present in the demanding state when the crime was committed and thereafter fled, 19 P. S. § 191.3 (Pet. A. 33a), or that he committed an act outside the demanding state which resulted in a crime in the demanding state, 19 P. S. § 191.6 (Pet. A. 34a). Second, the Detainer Agreement provides that "delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery." 19 P. S. § 1431, Art. IV(d). (Pet. A. 25a). On the other hand, an Extradition Act transfer may be accomplished only after the person sought has been formally arrested upon a warrant of arrest signed by the governor of the sending state. 19 P. S. § 191.7-.8 (Pet. A. 35a). Third, after request under the Detainer Agreement, the prisoner has a right to petition the governor for disapproval, but he is rarely advised of this right, and the petition to the governor provided by the Detainer Agreement rarely results in relief. *See* **Commonwealth ex rel. Coleman v. Cuyler,** *supra*, 396 A. 2d at 404 (Spaeth, J., dissenting). The prisoner has no way to ensure that the governor's decision will be based on the facts, since there is no method established

by which the governor can find facts.[25] Moreover, the Agreement does not even provide that the governor must be informed of the request. Yet if the governor fails to act on the petition for thirty days, the prisoner is transferred to the receiving state. *See* 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a). By contrast, the Extradition Act provides:

> "No person arrested upon [the governor's] warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus."

19 P. S. § 191.10 (Pet. A. 36a).

Finally, under the Detainer Agreement, no pre-transfer hearing is required. Under the Extradition Act, the person arrested may challenge the transfer by petition for a writ of habeas corpus. A hearing is then required at which the demanding state must establish that the requesting documents are in order, that the person sought is charged with a crime in the demanding state, that he is a fugitive, and that he was present in the demanding state at the time the crime charged was committed. *See, e.g.*, **Michigan v. Doran**, *supra*, 439 U. S. at 289.

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25. There is, of course, no way for a governer of the sending state to have a hearing under the Extradition Act, but that stage is not the sole opportunity for the prisoner to challenge his transfer.

B. The Disparate Treatment of Prisoners Subject to Interstate Transfer Under the Extradition Act and Detainer Agreement Is Irrational.

The equal protection clause of the fourteenth amendment forbids discrimination between persons who are similarly situated, and requires that, at a minimum, there be some rational basis for treating such persons differently. *See, e.g.*, **McGinnis v. Royster,** 410 U. S. 263 (1973); **James v. Strange,** 407 U. S. 128 (1972); **Humphrey v. Cady,** 405 U. S. 504 (1972). These standards are not inapplicable merely because the persons involved are prisoners serving valid sentences. *See* **Baxtrom v. Herold,** 383 U. S. 107 (1966).

The petitioners' contention that the only classes drawn by the two statutes in question are all prisoners on the one hand and the general public on the other (Brief for Petitioners at 55) ignores the reality that interstate transfer of persons may occur under either the Extradition Act or the Detainer Agreement as a result of an arbitrary decision to proceed under one statute rather than another.[26] Equal protection claims are especially persuasive if an individual was deprived of procedural protections merely by the arbitrary decision of a state to utilize one statute rather than another. **Humphrey v. Cady,** *supra* at 512.

Moreover, even if arbitrary decisions are avoided by a uniform approach to all transfers; in some instances a

26. The decision by the Court in **United States v. Mauro,** 436 U. S. 340, 369-72 (1978), binding the United States by the Detainer Agreement when it activates its provisions by filing a detainer against a state prisoner and then obtains his custody by means of a writ of habeas corpus *ad prosequendum,* has not resolved the issue of arbitrary choice of statute when one state requests transfer from another state and both states are parties to the Detainer Agreement as well as the Extradition Act. Thus a governor concerned with prisoners' rights may still make his request under the Extradition Act. *But see* **United States ex rel. Esola v. Groomes,** 520 F. 2d 830 (3d Cir. 1975) (detainer agreement must be used when available).

different choice will be made of necessity. There remain states which have enacted the Extradition Act, but not the Detainer Agreement. 11 **Uniform Laws Annotated** at 11, 68 (Supp. 1980). These states must employ the Extradition Act with its procedural safeguards for removal and interstate transfer of prisoners even if the Detainer Agreement is determined to be the exclusive means of transportation between member states. Thus, every Pennsylvania prisoner transferred to, for example, Louisiana, obtains substantially more procedural protections than respondent and others transferred to New Jersey.

In evaluating the rationality of the statutory differences, the relevant comparison must be between prisoners transferred under the Detainer Agreement and prisoners transferred under the Extradition Act. Even if there were a rational basis for affording persons at large greater safeguards than prisoners, certainly there can be no conceivable basis for the grossly disparate treatment of similarly situated prisoners transferred interstate under one statute rather than the other.

Moreover, even the distinction between the rights afforded prisoners under the Detainer Agreement and persons at large under the Extradition Act is irrational. For the purpose of an extradition hearing is not merely to challenge custody in the sending state. The hearing is also to determine and to test the legality of the interstate transfer. *See* **Michigan v. Doran,** *supra*, 439 U. S. at 289.

It is this opportunity to test and to determine the propriety of the transfer that is lacking under the Detainer Agreement. Because of this deficiency, respondent's transfer to New Jersey and the interstate transfers of other persons under the Detainer Agreement denied and continue to deny prisoners due process of law, and, in comparison with the provisions of the Extradition Act, violated the equal protection clause of the fourteenth amendment.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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Supreme Court, U. S.
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No. 78-1841

In the Supreme Court of the United States

OCTOBER TERM, 1979

JULIUS T. CUYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL., PETITIONERS

v.

JOHN ADAMS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1841

JULIUS T. CUYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL., PETITIONERS

v.

JOHN ADAMS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is filed in response to the Court's invitation. It does not appear, however, that the decision of the statutory issues presented in this case would affect the interests of the United States, since the decision of the court of appeals would not apply either to the transfer of federal prisoners to temporary state custody for trial or to the acquisition of temporary

custody of state prisoners to stand trial on federal charges (see note 4, *infra*).

QUESTION PRESENTED

Whether Article IV of the Interstate Agreement on Detainers requires that prisoners transferred from one state to another for trial on criminal charges be afforded the procedural safeguards provided by the Uniform Criminal Extradition Act.

STATEMENT

1. In May 1977, New Jersey authorities filed a detainer with Pennsylvania correctional authorities regarding respondent, who was then serving a prison sentence at a Pennsylvania state prison. In accordance with Article IV(a) of the Interstate Agreement on Detainers ("the Agreement"),[1] the New Jersey authorities requested temporary custody of respondent in order to prosecute him for armed robbery and other offenses. Respondent received a copy of this request for temporary custody, which specified the charges pending against him but did not inform him of his right to petition the Governor of Pennsylvania to disapprove the requested transfer (Pet. App. 2a-3a, 14a-15a).

Prior to being transferred to New Jersey, respondent filed suit in the United States District Court for the Eastern District of Pennsylvania on behalf of

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[1] Both New Jersey and Pennsylvania are signatories to the Agreement. See N.J. Stat. Ann. tit. 2A, §§ 159A-1 to 159A-15 (West 1971); Pa. Stat. Ann. tit. 19, §§ 1431-1438 (Purdon 1964).

himself and others similarly situated, seeking damages and declaratory and injunctive relief under 42 U.S.C. 1983. He claimed that transfer of a prisoner pursuant to Article IV of the Agreement violates the Constitution in two respects. First, he asserted that the Due Process Clause requires the sending state (here Pennsylvania) to provide a prisoner subject to transfer under the Agreement with certain procedural protections, including a pre-transfer hearing. Respondent also contended that the state officials had deprived him of equal protection of the laws by processing him under the Agreement rather than under the Uniform Criminal Extradition Act ("Extradition Act").[2]

2. On October 21, 1977, the district court dismissed respondent's complaint for failure to state a claim upon which relief could be granted (Pet. App. 14a-19a; 441 F. Supp. 556). The court initially observed that because respondent had sought damages and certification of a class action, his claim was not moot even though he had already been transferred to New Jersey for trial on the pending charges (Pet. App. 15a n.1). The court then rejected respondent's constitutional claims. Relying on *Frisbie* v. *Collins*, 342 U.S. 519 (1952), and *Meachum* v. *Fano*, 427 U.S. 215 (1976), the court held that, as a matter of due process, respondent was not entitled to a pre-transfer hearing or to notice of the opportunity to

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[2] New Jersey and Pennsylvania have adopted the Extradition Act. See N.J. Stat. Ann. tit. 2A, §§ 160-6 to 160-35 (West 1971); Pa. Stat. Ann. tit. 19, §§ 191.1-191.31 (Purdon 1964).

petition the governor to disapprove the request for temporary custody (Pet. App. 15a-17a). In addition, the court concluded that the state may constitutionally distinguish between the transfer of a lawfully incarcerated prisoner pursuant to the Agreement and the extradition of a person otherwise at large in accordance with the Extradition Act (*id.* at 17a-18a).

Without reaching respondent's constitutional claims, the court of appeals reversed. The court concluded that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights under the Extradition Act (Pet. App. 7a, 13a). The court noted that an intermediate appellate court in Pennsylvania had reached a different result in similar circumstances. See *Commonwealth ex rel. Coleman* v. *Cuyler*, 396 A.2d 394 (Pa. Super. Ct. 1978). The court of appeals held, however, that the state court decision was not controlling because construction of an interstate compact such as the Agreement presents a federal question (Pet. App. 12a). The court also suggested that the *Coleman* decision had discussed only "constitutional considerations" and not the statutory question reached by the court (*id.* at 10a). The court of appeals therefore vacated the decision of the district court and "remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief * * *" (Pet. App. 13a).

DISCUSSION

1. This case presents important and recurring questions concerning the relationship between the Interstate Agreement on Detainers, which has been enacted by at least 46 states, the District of Columbia, and the federal government,[3] and the Uniform Criminal Extradition Act, which has been adopted by at least 48 states. Primarily at issue is whether a prisoner who is transferred between states under the Agreement is entitled to the pretransfer procedural protections available to a person arrested and extradited under the Extradition Act. See *Michigan* v. *Doran*, 439 U.S. 282, 287 (1978); Section 10 of the Uniform Criminal Extradition Act. Although the decision of the court of appeals apparently does not affect the transfer of prisoners to and from federal custody,[4] it does have a potentially broad impact on

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[3] 18 U.S.C. App., at 1395-1398.

[4] As we understand the decision of the court of appeals, it concluded simply that Article IV(d) of the Agreement preserves a prisoner's existing procedural rights granted by other constitutional or legislative provisions, including the Extradition Act. Transfers to and from federal custody are generally not subject either to the Extradition Clause of the Constitution, Art. IV, Sec. 2, cl. 2, or the legislation such as the Extradition Act, which is designed to implement the Extradition Clause. See, *e.g.*, *United States* v. *Guy*, 456 F.2d 1157, 1160 (8th Cir.), cert. denied, 409 U.S. 896 (1972); *Derengowski* v. *United States*, 404 F.2d 778, 780 (8th Cir. 1968), cert. denied, 394 U.S. 1024 (1969); *Thomas* v. *Levi*, 422 F. Supp. 1027 (E.D. Pa. 1976). Thus, if this Court were to grant review in this case and affirm the decision below, the only impact on the federal government might arise in the context of the extradition of a prisoner from the District of Columbia to a state. See 23 D.C. Code Ann. § 704.

the procedures required to transfer prisoners between states. Because the decision of the court of appeals is in apparent conflict with decisions of other appellate courts, including state courts within the Third Circuit,[5] plenary review by this Court may be warranted.

Given the peculiar circumstances of this case, however, it may be more appropriate for the Court to remand this case to the court of appeals for consideration whether respondent's claims are now moot. Respondent's suit concerned his right to certain pretransfer procedural protections.[6] But while his complaint was pending in the district court, respondent was transferred to custody in New Jersey. See Pet. App. 15a n.1. We have been informed that subsequently respondent was convicted in the New

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[5] See, *e.g.*, *Commonwealth ex rel. Coleman* v. *Cuyler*, 396 A.2d 394 (Pa. Super. Ct. 1978); *Hystad* v. *Rhay*, 12 Wash. App. 872, 533 P.2d 409 (1975); *State* v. *Thompson*, 133 N.J. Super. 180, 336 A.2d 11 (1975); *Wertheimer* v. *State*, 294 Minn. 293, 201 N.W. 2d 383 (1972). But see *McQueen* v. *Wyrick*, 543 S.W.2d 778 (Mo. 1976); *Moen* v. *Wilson*, 189 Colo. 85, 536 P.2d 1129 (1975); *State ex rel. Garner* v. *Gray*, 55 Wis.2d 574, 201 N.W. 2d 163 (1972). See also *Atkinson* v. *Haverberry*, 589 F.2d 917 (5th Cir. 1979); *State ex rel. Bailey* v. *Shepard*, 584 F.2d 858 (8th Cir. 1978).

[6] There is also a substantial question whether respondent could challenge the fact of his interstate transfer in a federal court proceeding under 42 U.S.C. 1983 rather than in a habeas corpus action in state or federal court. See *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973). Compare *Michigan* v. *Doran*, *supra* (extradition challenged in state habeas corpus proceeding), with *Meachum* v. *Fano*, 427 U.S. 215 (1976) (intrastate transfer challenged under 42 U.S.C. 1983).

Jersey state courts, sentenced to a term of 9¾ years' imprisonment to run concurrently with his 30-year sentence in Pennsylvania, and returned to Pennsylvania's custody on March 23, 1978. It is therefore apparent that respondent's claims for injunctive and declaratory relief are moot. See, *e.g.*, *County of Los Angeles* v. *Davis*, 440 U.S. 625 (1979); see also *Pettibone* v. *Nichols*, 203 U.S. 192 (1906) (no right to habeas corpus relief for wrongful extradition); *Frisbie* v. *Collins*, 342 U.S. 519 (1952). Moreover, although respondent sought class action certification, the district court never certified an appropriate class to succeed to respondent's claims. See Pet. App. 15a n.1.[7] Finally, even if respondent's request for dam-

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[7] Since "it is only a 'properly certified' class that may succeed to the adversary position of a named representative whose claim becomes moot," *Kremens* v. *Bartley*, 431 U.S. 119, 132-133 (1977), quoting *Board of School Commissioners* v. *Jacobs*, 420 U.S. 128, 130 (1975), the failure of the district court to certify a class strongly suggests that there is no longer a live case or controversy. Nor is this a case in which certification is appropriate after the expiration of the named plaintiff's claim because the claim is "by nature temporary" and it is unlikely that an individual claim would survive "long enough for a district judge to certify the class." See *Gerstein* v. *Pugh*, 420 U.S. 103, 110 n.11 (1975). Under Article IV(a) of the Agreement, a prisoner may not be transferred for at least 30 days after the request for temporary custody is received by the sending state. Furthermore, respondent could have sought preliminary injunctive relief in this case, at least pending class certification. See generally *United States Parole Commission* v. *Geraghty*, No. 78-572. A copy of the government's brief in this case has been sent to both petitioners and respondent.

ages is not technically moot,[8] resolution of that claim seemingly depends on the determination of respondent's constitutional contentions and not a determination of whether respondent was denied a hearing guaranteed only by state statute.[9]

2. The Extradition Clause of the Constitution obligates any state to extradite a fugitive from justice of another state upon receipt of a demand from the executive of the state in which the fugitive is charged

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[8] As evidenced by his conviction in New Jersey, respondent would ultimately have been transferred to New Jersey authorities even if he had been granted a pretransfer hearing. Accordingly, respondent at most could recover nominal damages for the alleged violation of his right to procedural due process. See *Carey* v. *Piphus*, 435 U.S. 247 (1978). Moreover, even assuming that petitioners violated respondent's constitutional rights, it is clear that respondent is not even entitled to nominal damages in the circumstances of this case. At the time that the New Jersey authorities requested temporary custody of respondent, both the New Jersey and Pennsylvania courts had declared that a prisoner transferred pursuant to the agreement has no right to a pretransfer hearing. See *Commonwealth ex rel. Coleman* v. *Cuyler, supra*; *State* v. *Thompson, supra*. Because petitioners' actions comported with those decisions, there is no basis for awarding respondent damages. See *Procunier* v. *Navarette*, 434 U.S. 555 (1978).

[9] The court of appeals did not purport to construe the Agreement and the Extradition Act as a basis for awarding damages. Rather, the court "remanded for further proceedings consistent with this opinion, including consideration of the propriety of declaratory relief applicable to members of the class" (Pet. App. 13a). Indeed, it is not readily apparent how the denial of a hearing required only by state law (the Extradition Act) gives rise to a cause of action for damages cognizable under Section 1983, unless the denial is based on invidious grounds.

with a crime.[10] U.S. Const. Art. IV, Sec. 2, cl. 2. As this Court recently explained (*Michigan* v. *Doran*, *supra*, 439 U.S. at 287):

> The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed * * * [and] to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus "balkanize" the administration of criminal justice among the several states.

However, the Extradition Clause, which does not set forth a particular extradition procedure, is not self executing and does not afford an accused any procedural protections. See, *e.g.*, *Drew* v. *Thaw*, 235 U.S. 432, 439 (1914); *Marbles* v. *Creecy*, 215 U.S. 63, 67-68 (1909); *Munsey* v. *Clough*, 196 U.S. 364, 372 (1905); *Roberts* v. *Reilly*, 116 U.S. 80, 94 (1885).

Accordingly, Congress and the state legislatures have from time to time enacted legislation in order to regularize and to particularize the extradition process. For example, since 1793 Congress has mandated that a state to which a fugitive has fled must arrest and extradite a fugitive upon presentation of a proper demand by the executive of the requesting state. See 18 U.S.C. 3182; *Michigan* v. *Doran*, *supra*, 439 U.S. at 287 & n.6; *Kentucky* v. *Dennison*, 65

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[10] The failure of a state executive to comply with a demand for extradition is apparently not subject to judicial review. See *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66, 107-110 (1860).

U.S. (24 How.) 66, 104-107 (1860).[11] In addition, all but two of the states have adopted the Uniform Criminal Extradition Act. In addition, both Congress and the great majority of the states have enacted the Interstate Agreement on Detainers. The interaction of these two statutes gives rise to this case.

a. The Extradition Act specifies in considerable detail the procedures to be followed in the traditional extradition process. Section 3 of the Act governs the

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[11] The demand must be accompanied by a certified indictment or affidavit charging the fugitive with a crime in the requesting state. 18 U.S.C. 3182. A fugitive arrested and extradited pursuant to Section 3182 is not entitled to a hearing before the governor or formal notice of the extradition proceedings. See, *e.g.*, *Munsey* v. *Clough*, *supra*, 196 U.S. at 372. It is well settled, however, that such a person may, prior to extradition, bring a habeas corpus action based on Section 3182 for the limited purpose of challenging

> (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

Michigan v. *Doran*, *supra*, 439 U.S. at 289. See, *e.g.*, *Ex parte Reggel*, 114 U.S. 642, 651 (1885); *Roberts* v. *Reilly*, *supra*, 116 U.S. at 94-97; *Drew* v. *Thaw*, *supra*, 235 U.S. at 440. If there is conflicting evidence regarding the accused's identity or status as a fugitive, the court on habeas corpus may not review the executive's determination in favor of extradition. See *Munsey* v. *Clough*, *supra*, 196 U.S. at 374-375; *Pettibone* v. *Nichols*, 203 U.S. 192, 204-205 (1906).

Respondent, of course, was not transferred pursuant to Section 3182.

form and content of the executive demand.[12] The executive in the asylum state may make an independent investigation of the circumstances underlying the request for extradition (Section 4; Pet. App. 33a-34a). If the executive determines that the demand will be honored, he signs an arrest warrant conforming with Section 7 of the Act. After the accused has been arrested but before he may be turned over to the authorities of the requesting state, Section 10 of the Act provides that he must be taken before a judge in the asylum state and informed of the request for extradition, the crime of which he is accused, and his right to obtain counsel to challenge the extradition (Pet. App. 36a). Thereafter, the fugitive may bring a limited habeas corpus proceeding challenging his extradition. See note 11, *supra; Michigan* v. *Doran, supra,* 439 U.S. at 289; see also Section 20 of the Act (Pet. App. 41a).

Although the Extradition Act is designed primarily to govern the extradition of a fugitive otherwise at large in the asylum state, the Act also may be employed to bring about the extradition of a person already imprisoned in the asylum state. Thus, Section 5 of the Act provides that the executive of the requesting state "may agree with the executive au-

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[12] See Pet. App. 33a. The demand must be in writing and ordinarily must allege that the accused was in the demanding state at the time of the crime. In addition, the demand must be accompanied by an indictment (or information or affidavit made before a magistrate) that substantially charges the accused with a crime under state law and that has been authenticated by an executive authority in the demanding state.

thority of [the asylum] state for the extradition of [a prisoner] before the conclusion of [pending criminal] proceedings or his term of sentence in such other state, upon condition that such person be returned to [the asylum] state at the expense of [the requesting] State as soon as the prosecution in [the requesting] State is terminated" (Pet. App. 34a).[13] Section 19 of the Act makes clear, however, that regardless of the demand, the executive in the asylum state has discretion to keep custody of a prisoner until he has been tried, convicted, and discharged from prison.

b. In contrast to the Extradition Act, the Interstate Agreement on Detainers applies only to persons already imprisoned in another state. See Article I. The Agreement "prescribes procedures by which a member State [including the federal government] may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction." *United States* v. *Mauro*, 436 U.S. 340, 343 (1978). The Agreement is applicable whenever a member ("receiving") state has filed a detainer regarding a prisoner in another member ("sending") state. See *id.* at 343.[14] If a detainer is filed, the state au-

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[13] It is not apparent whether an executive agreement to transfer a prisoner pursuant to Section 5 also entails the other procedures set forth in the Extradition Act.

[14] "The Agreement itself contains no definition of the word 'detainer.' The House and Senate Reports [accompanying Congress' adoption of the Agreement], however, explain that '[a] detainer is a notification filed with the institution in

thorities having custody of the prisoner must inform the prisoner of the source and contents of the detainer and also of his rights under Article III of the Agreement. See Article III(c).

Article III confers upon a prisoner against whom a detainer has been lodged the right to demand that the prosecuting authorities in the receiving state bring him to trial within 180 days of his written request. Article III(a). Such a written request constitutes a request for final disposition of all untried charges underlying detainers filed by the receiving state. Article III(d). The request is also deemed to waive any extradition proceedings as to all untried charges and as to any sentence that is thereafter imposed on the prisoner in the receiving state and that must be served following completion of his sentence in the sending state. Article III(e). Failure of the authorities to commence trial within the 180-day period, unless excused for good cause, results in the dismissal of all untried charges. Articles III(a), V(c).[15]

Article IV of the Agreement authorizes a prosecutor in the receiving state who has lodged a detainer against a prisoner in the sending state to secure the prisoner's presence for trial on pending charges. See *United States* v. *Mauro*, *supra*, 436 U.S. at 351-352. The prosecutor must present to the appropriate au-

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which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction.' H.R. Rep. No. 91-1018, p. 2 (1970); S. Rep. No. 91-1356, p. 2 (1970)." *United States* v. *Mauro*, *supra*, 436 U.S. at 359.

[15] The Agreement is reprinted at Pet. App. 20a-31a.

thorities in the sending state a written request for temporary custody that has been "duly approved, recorded, and transmitted" by the trial court in the receiving state. See Article IV(a). In addition, Article IV(a) establishes a mandatory 30-day waiting period following the request for temporary custody, during which "the Governor of the sending State may disapprove the request * * *, either upon his own motion or upon motion of the prisoner." If the prisoner is transferred to the custody of the receiving state, the receiving state must try him before returning him to the custody of the sending state and, unless good cause for delay is shown, the trial must commence within 120 days of the prisoner's arrival in the receiving state. Article IV(e), (c).

c. Relying primarily on Article IV(d) of the Agreement,[16] the court of appeals concluded that the Agreement preserves the prisoner's existing rights under the Extradition Act (Pet. App. 7a). But Article IV(d) states only that the Agreement does not deprive a "prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof * * *." Nothing in the Agreement suggests that "any right" includes the proce-

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[16] Article IV(d) of the Agreement provides:

> Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

dures of the Extradition Act.[17] Rather, the only right "to contest the legality of [a prisoner's] delivery" expressly contained in the Agreement is the prisoner's right under Article IV(a) to petition the governor to disapprove the prosecutor's request for temporary custody during the 30-day waiting period. See, *e.g.*, *Atkinson* v. *Hanberry*, 589 F.2d 917, 919 (5th Cir. 1979); *Wertheimer* v. *State*, 294 Minn. 293,

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[17] The court of appeals indicated that Article III(e) supports its view. That provision simply establishes, however, that a prisoner who requests immediate disposition of the charges underlying the detainer thereby waives his right to petition the governor or otherwise object to his transfer. See note 18, *infra*. Equally important, Article III(e) ensures that a prisoner who requests final disposition under Article III(a) and who is thereafter convicted and sentenced in the receiving state may be summarily transferred back to the receiving state after he serves his sentence in the sending state. See Council of State Governments, *The Handbook on Interstate Crime Control* 115 (rev. ed. 1966).

The court of appeals' reliance on the explanatory note of the Council of State Governments is, in our view, similarly misplaced. Like the Agreement, those comments specifically identify only the prisoner's right to petition the governor of the sending state as a right preserved by Article IV(d). See Council of State Governments, *Suggested State Legislation, Program for 1957*, 78-79 (1956). We further note that the handbook prepared by the Council of State Governments concerning implementation of the Agreement nowhere suggests that a prisoner transferred under the Agreement is entitled to the formal extradition proceedings embodied in the Extradition Act. To the contrary, this guide discusses only the prisoner's right to request the executive of the sending state to disapprove his transfer. See *The Handbook on Interstate Crime*, *supra*, at 91-116. See also H.R. Rep. 91-1018, 91st Cong., 2d Sess. 3 (1970).

295, 201 N.W. 2d 383, 385 (1972).[18] Thus, a prisoner subject to transfer pursuant to the Agreement is entitled to all the detailed procedures of the Extradition Act only if, as a matter of state law, the Extradition Act covers all interstate transfers, including those of prisoners. Of course, in *Commonwealth ex rel. Coleman* v. *Cuyler, supra,* 396 A.2d at 399-400, the Superior Court of Pennsylvania squarely rejected this construction of the Extradition Act,[19] and

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[18] In addition, a prisoner transferred under the Agreement may have the right to a habeas corpus hearing prior to transfer for the very limited purpose of challenging the states' failure to comply with the Agreement. See *Commonwealth ex rel. Coleman* v. *Cuyler, supra,* 396 A.2d at 397; *Wertheimer* v. *State, supra,* 294 Minn. at 298-299, 201 N.W.2d at 386; *Atkinson* v. *Hanberry, supra,* 589 F.2d at 920 n.6. For example, a prisoner might be able to bring a pretransfer habeas corpus proceeding regarding the failure of the receiving state to file a proper detainer or a proper request for temporary custody. In such a proceeding, the question whether the prisoner is technically a fugitive from justice—a question subject to judicial review in the habeas corpus proceeding held in conjunction with the traditional extradition process (see note 11, *supra*)—would not be an issue, since the Agreement, unlike the Extradition Act and Section 3182, applies to all prisoners whether or not they are fugitives from justice. Compare Articles I, III(a), and IV(a) with Section 2 of the Extradition Act; 18 U.S.C. 3182.

[19] Accord, *Wallace* v. *Hewitt,* 428 F. Supp. 39, 40 n.3 (M.D. Pa. 1976) (construing Pennsylvania law). Various other courts have also viewed the two statutes as operating independently of one another. See, *e.g., State ex rel. Bailey* v. *Shepard, supra; Wertheimer* v. *State, supra; Hystad* v. *Rhay, supra; State* v. *Thompson, supra; Moen* v. *Wilson, supra; State ex rel. Garner* v. *Gray.* But see *McQueen* v. *Wyrick, supra.* Some of these courts have nonetheless concluded that the Constitution requires the state to provide a prisoner

the court of appeals should have deferred to that state law decision. See, *e.g.*, *West* v. *A.T.&T. Co.*, 311 U.S. 223, 237 (1940).

Moreover, there are compelling indications apart from the *Coleman* decision that the court of appeals erred. As this Court recognized in *United States* v. *Mauro*, *supra*, 436 U.S. at 355-356 n.23, the Agreement was designed to replace the cumbersome methods of formal extradition and special executive contracts that had previously been the only means of transferring prisoners between states. The court of appeals' construction defeats this objective. Furthermore, although formal extradition proceedings provide significant and needed protections when a person at large is arrested by one state at the behest of another, the transfer of a prisoner from one jurisdiction to another need not be accompanied by such elaborate procedures in light of the significantly di-

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transferred under the Agreement with the procedures established by the Extradition Act. See *State ex rel. Garner* v. *Gray*, *supra* (due process and equal protection); *Moen* v. *Wilson*, *supra* (due process). We submit, however, that because the Agreement covers prisoners only, whereas the Extradition Act primarily governs the arrest and extradition of otherwise free persons, there is plainly a rational basis for the different procedures set forth in the two statutes. See, *e.g.*, *Wertheimer* v. *State*, *supra*; *State* v. *Thompson*, *supra*; *Coleman*, *supra*. Furthermore, the procedures contemplated by the Agreement certainly satisfy whatever process, if any, is due a prisoner transferred from the custody of one sovereign to another. *Ponzi* v. *Fessenden*, 258 U.S. 254, 260 (1922); *Atkinson* v. *Hanberry*, *supra*, 589 F.2d at 919-920. See, *e.g.*, *Meachum* v. *Fano*, 427 U.S. 215 (1976); *Montanye* v. *Haymes*, 427 U.S. 236 (1976); cf. *Frisbie* v. *Collins*, 342 U.S. 519 (1952).

minished liberty interests that are at stake. See *Ponzi* v. *Fessenden*, 258 U.S. 254, 260 (1922).[20] In sum, the decision of the court of appeals needlessly defeats the purpose of the Agreement to "provid[e] States with a simple and efficient means of obtaining prisoners from other States." *United States* v. *Mauro, supra*, 436 U.S. at 356 n.23.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative the Court may wish to vacate the judgment of the court of appeals and remand the case for consideration of mootness.

Respectfully submitted.

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[20] A prisoner "may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other [sovereignty whose laws he has offended] may also subject him to conviction of crime against it. * * * Such a waiver is a matter that addresses itself solely to the discretion of the sovereignty making it and of its representatives with power to grant it." *Ponzi* v. *Fessenden, supra*, 258 U.S. at 260.

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